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AND  
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—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

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# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, NOVEMBER 6, 1852.  
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## COMMENCEMENT OF MICHAEL- MAS TERM.

### PROSPECTS OF THE PROFESSION.

THE Term and the Legal Year commenced on Tuesday last, under circumstances of novelty and peculiarity calculated to endow the event with remarkable interest. The Judges, (with the single exception of Sir John Stuart, who has succeeded the lamented Sir James Parker, as one of the Vice-Chancellors,) and the leading practitioners, are identically those with whom the Public and the Profession have been previously familiar, but the system of procedure under which the law is to be administered, both in the Superior Courts of Law and Equity, is so much metamorphosed that its oldest acquaintances may be excused if they fail readily to recognise it. In sober seriousness, the experiment that has now commenced, is one of equal magnitude and importance, and imposes on every man who proposes to practise in the Courts, the obligation, amongst others, of acquiring a knowledge of much that is absolutely *new*, to say nothing of what he has hitherto been wholly, or but imperfectly, acquainted with.

The Common Law Procedure Act and the Nisi Prius Officers' Act at one side of the Hall, and the Masters' Abolition Act, the Sutors' Relief Act, and the Chancery Proceedings Amendment Act at the other side, with the Rules and Orders already made, or about to be promulgated, in accordance with the provisions of these statutes, and for the purpose of carrying them better into effect, comprise a new code of procedure which it requires no ordinary amount of perseverance and industry to master.

To say nothing of the numerous and important questions likely to arise upon the  
VOL. XLV. No. 1,287.

construction of the new Acts, the tendency of recent legislation is, to give an almost unlimited discretion to the Judges in all matters of procedure, so that the labour and responsibility of those learned functionaries will be materially increased.

With respect to the effect of the new Statutes and Rules upon the interests of the Profession, as may be expected, a great variety of opinion exists; but we rejoice to perceive, that the prevailing feeling is not that of despondency, and that a well founded confidence is entertained that, as no change of practice can impair the utility of the Profession in its relation to the Public, its substantial interest as a whole cannot be permanently compromised, although much individual inconvenience and some degree of general depression may for the present be anticipated.

It is much to be lamented that at such a juncture anything should have occurred to diminish the cordiality and good understanding that prevailed for so many years between the two great branches of the Profession, to the manifest advantage of both. The question as to the expediency and propriety of barristers taking instructions directly from clients without the intervention of attorneys, has been somewhat inopportunistly revived, by the publication of a letter from Lord Denman, which appeared in the first instance in the *Law Review*. With all due respect for the venerable writer, we are constrained to say, that Lord Denman's letter is altogether unsatisfactory. His lordship concludes, that as honourable men require no check, and unscrupulous men would find the means to evade any rules made for the government of the Profession, there should be no rule adopted in reference to the subject under consideration, but that the matter must be left altogether to the discretion of the barrister. A licence is

thus given which, it is to be feared, men wanting in delicacy and discretion will be found to exercise with little regard for the honour and interests of the Profession, upon views based on the narrowest estimate of personal advantage.

The discussions which took place during the last Session of Parliament, established the fact, that in the opinion of the general public, the expenses of law proceedings were enormous, and operated as a clog upon the administration of justice. The recent Law Amendment Acts have been framed with a view to diminish the evil, and we have learned with satisfaction that a general disposition exists, amongst all classes of the Profession, to give effect to those enactments, and to meet the reasonable requirements of the Public by adopting a scale of fees proportioned to the wants and wishes of the community. In this spirit we are informed, that a body of barristers who had practised as special pleaders, waited upon the Attorney-General to obtain his sanction to an arrangement which would enable them to settle pleadings for half-a-guinea, instead of the minimum fee of one guinea, heretofore required by members of the Bar. It was truly stated, that as the guinea fee was paid for this counsel's signature, as well as his judgment in the settlement of the pleadings, and the fee hitherto allowed for the signature was now abolished by statute, the effect of maintaining the rule of guinea fees would be to drive the junior Bar from the field as pleaders, and to throw this branch of the practice altogether into the hands of gentlemen practising under the Bar. The Attorney-General, we are informed, with that good sense and deference to the wishes of the Public, which might be expected from him, unhesitatingly declared, that he could see nothing derogatory to the Profession, or injurious to the character of the Bar, in the juniors of that branch of the Profession, if they thought fit, accepting half-guinea fees for settling pleadings where guinea fees had hitherto been required. In future, therefore, there can be no doubt, that the *ordinary* fee paid to a barrister for settling the simple pleadings required in a common law action, will not exceed half-a-guinea! It is also understood that, many of the junior members of the Bar have intimated their intention of attending at the Judges' Chambers for a fee of one guinea, instead of the fee of two guineas, which has been hitherto expected where a barrister was required to attend. The gentlemen practising under the Bar as special pleaders, if the race

does not speedily become extinct, must necessarily conform themselves without delay to the altered state of circumstances by reducing their fees, which were never large, to the most moderate scale. We differ altogether from those who find in *this movement* of the Bar anything to dread or complain of. It is a timely and judicious concession to the feeling which prevails beyond the pale of the Profession, and which regards the expenses attendant upon the administration of justice as a great public and social evil. Not only the fees paid to the Bar, but the outlay required upon every stage of the proceedings both in the Courts of Law and Equity must be materially diminished, before the Profession is placed upon a satisfactory footing, and its capabilities fairly developed.

We are pleased to observe that the Lord Chancellor, in deference to the wishes of the Profession, consented, on the first day of Term, that the Courts of Equity should sit, during the remainder of the Term, at Lincoln's Inn.

## JURISDICTION IN BANKRUPTCY.

### REMUNERATION OF THE OFFICIAL ASSIGNEES.

THE mode in which the Official Assignees in Bankruptcy are remunerated, and the operation of the system in reference to particular estates, has for some time excited considerable dissatisfaction amongst the class of wholesale traders who are especially interested in the economical administration of the assets of persons becoming bankrupts. Representations have been made to the Lord Chancellor on the subject, supported by facts, which have induced his Lordship to direct his earnest attention to the matter, and we shall be disappointed if some plan cannot be devised to remove the ground of complaint, and put the emoluments of those useful and respectable functionaries upon a footing more satisfactory to the suitors of the Court.

As our readers are aware, the Official Assignees are paid, not by fixed salaries, but by a per-centage receivable from the various estates to which they are appointed assignees. The Bankrupt Law Consolidation Act (sect. 44) provides, that "the Court may order and allow to be paid out of any bankrupt's estate, to the Official Assignee thereof, as a remuneration for his services, such sum as shall, upon consideration of the amount of the bankrupt's

property and the nature of the duties performed by such Official Assignee, appear to be just and reasonable." In pursuance of the authority conferred by this section, the Commissioners have been in the habit of ordering that the Official Assignee should receive a per-centage on the sums passing through his hands, which per-centage varies according to certain regulations laid down by the Commissioners individually in the exercise of their discretion. It is to be regretted that, as regards the scale of allowance to the Official Assignees, as in other matters of equal or greater importance, the practice established in the Courts, of the several Commissioners has not heretofore been uniform. In fixing the scale of allowance in any particular case, the Commissioners properly considered that the duties of an Official Assignee obliged him to keep commodious offices in the neighbourhood of the Courts, and to employ several clerks. They could not fail, also, to recollect that the trouble, labour, and responsibility of the Official Assignee is in little or no degree proportioned to the amount of the bankrupt's property. Cases frequently occur in which a bankruptcy that produces no dividend to the creditors, and no profit to the Official Assignee, imposes a vast amount of labour on that officer, and subjects him to serious loss. On the other hand, in some instances, large estates are realised with little trouble and no risk to the Official Assignee, and the per-centage recoverable by the Official Assignee in such cases is apparently extravagant. A case of the latter class was brought by petition before the Lords Justices in the course of the present year, upon appeal from the order of one of the learned Commissioners.<sup>1</sup> In that case, the creditors, before resorting to the Court of Bankruptcy, appointed trustees by whom the assets of the insolvent trader were collected and lodged in a bank for distribution. It was speedily ascertained, however, that the authority of the Court of Bankruptcy was necessary for the due administration of the estate, upon which a petition for adjudication in bankruptcy was filed, and upon the appointment of the Official Assignee, the fund already collected, amounting to several thousands, was transferred to his name without more, and a dividend immediately declared. The Lords Justices thought the Commissioner, in ordering that the Official Assignee in this case should retain the ordinary per-centage upon the sum thus transferred to his name, did

not give effect to that branch of the section already cited (sect. 44), which directs him to consider "the nature of the duties performed by the Official Assignee," and to apportion the remuneration accordingly. In this particular case, therefore, the allowance to the Official Assignee was directed to be reduced, but this was an exceptional instance governed by its peculiar circumstances.

The importance and value of a public officer, whose principal function it is to administer assets, and who stands in a position independent alike of the bankrupt and the creditors, appears to be generally acknowledged: It is admitted, too, that the services of such an officer should be liberally remunerated, but differences of opinion exist as to the scheme or plan upon which the amount of remuneration should be fixed. Some persons contend that the Official Assignees should be remunerated by fixed salaries in the same manner as the Commissioners and Registrars of the Court of Bankruptcy, whilst others who have had an extensive experience in this branch of judicial administration, consider the peculiar duties of the Official Assignee render it desirable that he should have a direct pecuniary interest in the successful realisation of a bankrupt's estate, and in seeing that the assets are administered with the least possible expense to the creditors. Both these views, we have reason to believe, have been submitted to the consideration of the Lord Chancellor.

The Official Assignees and the suitors of the Court are equally dissatisfied with the present plan of remuneration. The former allege that the payment by a per-centage upon the amount realised, when neither the number nor the value of the estates committed to their charge can be calculated with any approach to certainty, subjects their incomes to a constant fluctuation, which not only diminishes the value of the appointment, but renders it inexpedient to maintain the staff of assistants that upon particular emergencies become indispensably necessary.<sup>2</sup> On the other hand, the suitors

<sup>1</sup> By a circular addressed to the Commissioners of the Court of Bankruptcy by the Lord Chancellor's secretary, in March, 1847, it appeared, from certain returns made to his Lordship, that the annual income derived by the Official Assignees, after allowing for all expenses, on the average of the three preceding years, had been 1,334*l.*, but it is believed that the income of the Official Assignees in the subsequent years has been considerably reduced.

<sup>2</sup> *In re Ashlin*. Easter Term, 1852.

complain that, under the present system, estates producing considerable assets are indirectly made to pay for services rendered to estates which produce little or nothing, and that the sums payable to the Official Assignee and to the Chief Registrar's account<sup>3</sup> absorb so large a portion of the assets as to render it expedient to avoid resorting to the jurisdiction in many cases in which, *but for the expense*, the administration of an estate in Bankruptcy would be decidedly beneficial both to the creditors and the public.

Although the Official Assignees are not selected from the members of the Legal Profession, but by the express provisions of the Statute 5 & 6 Vict. c. 122, s. 48, must be "merchants, brokers, accountants, or persons who are or have been engaged in trade in the United Kingdom," the satisfactory arrangement of the question now under consideration, as to the scale and mode of remunerating their services, cannot be considered as matter of indifference to the Profession, and, it is assumed, justifies this notice of the subject.

Since the above was written, the long expected *Rules and Orders*, made in pursuance of "the Bankrupt Law Consolidation Act, 1849," and approved by the Lord Chancellor, have been published. They are to take effect from and after the 11th January, 1853.

The following is the scale of allowance to be made to the Official Assignees, subject to variation in any particular case, and for special cause to be assigned by the Commissioner in writing and filed with the proceedings.

#### SCALE.

That there be paid to each Official Assignee for the examination of the bankrupt's accounts such sum as the Commissioner shall think fit, not exceeding 20*l.* for the accounts of one bankrupt, nor exceeding 20*l.* for the joint estate of two or more bankrupts; and not exceeding 10*l.* for each separate estate administered under the same adjudication.

For every debt collected 5*l.* per cent. on the first amount of 100*l.* or any less sum; 2½ per cent on the next amount of 400*l.* or any less

<sup>3</sup> By an order made by the Senior Commissioner and approved by the Lord Chancellor, under the authority of the Act 12 & 13 Vict. c. 106, s. 54, the Official Assignee is required to pay to "the Chief Registrar's account" from the gross produce of every bankrupt's estate, 5*l.* per cent. on the first 500*l.*; 3*l.* per cent. on further moneys not exceeding 5,000*l.*, and so on by a descending scale.

sum; 1*l.* per cent on the next amount of 500*l.* or any less sum; and ½ per cent on all further sums.

For property realised 2½ per cent. on the first amount of 500*l.* or any less sum; 1 per cent. on the next amount of 500*l.* or any less sum; and ½ per cent. on all further sums.

On dividend 2 per cent. on the first amount of 1,000*l.*, or any less sum actually divided, and 1 per cent. on all further sums. The percentage on mortgaged property to be calculated only on the residue payable to the bankrupt's estate.

For drawing every dividend warrant or renewed dividend warrant sixpence.

A note is appended to the orders relating to the Official Assignees' allowance, intimating that at the expiration of 12 months after these orders come into operation, the scale will be revised by the Commissioners, subject to the approval of the Lord Chancellor, regard being had to the amount of remuneration received by the Official Assignees within the preceding twelvemonths.

By these orders, as we shall hereafter have occasion to show, the complaint of the commercial community is rather aggravated.

#### FURTHER ORDERS IN CHANCERY, (Under the Master's Office Abolition Act.)

##### FEES OF OFFICE AND SOLICITORS.

23rd October, 1852.

THE Right Hon. Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Hon. Sir John Romilly, Master of the Rolls, the Right Hon. the Vice-Chancellor Sir George James Turner, and the Hon. the Vice-Chancellor Sir Richard Torin-Kindersley, doth hereby in pursuance of an Act of Parliament passed in the 15 & 16 Vict. c. 80, intitled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said Court," and in pursuance and execution of all other powers enabling him in that behalf, Order and Direct, as follows, *videlicet* :—

I. The chief clerks of the Master of the Rolls and Vice Chancellors respectively, are directed to take the following fees :

	£	s.	d.
1. For every original summons for the purpose of proceedings originating in chambers . . . . .	0	5	0
2. For every duplicate thereof . . . . .	0	5	0
3. For every other summons . . . . .	0	3	0
4. For every advertisement . . . . .	1	0	0
5. For every certificate or report . . . . .	1	0	0
6. For every certificate upon the passing of a receiver's or consignee's account, a further fee in respect of each 100 <i>l.</i> received of . . . . .	0	10	0

	£	s.	d.		£	s.	d.
7. For every order drawn up by the chief clerk made upon applications for time to plead, answer, or demur, for leave to amend bills or claims, or for enlarging publication, or the period for closing evidence, or for the production of documents, or applications relating to the conduct of suits or matters . . . . .	0	5	0	In cases of proceedings originating in chambers the same term fee as in a suit.			
8. For every other order drawn up by the chief clerk . . . . .	1	0	0	For preparing every other summons and attending to get same filled up and sealed at chambers . . . . .	0	6	8
II. The registrars are directed to take the following fees:—				For each copy of a summons to serve or leave at chambers . . . . .	0	2	0
For orders made by a Judge in chambers, drawn up by the registrar, the like fees as before directed to be taken by the chief clerk for orders drawn up by him.				For attending on a summons or other appointment, each day, a fee of 6s. 8d., 13s. 4d., or 1l. 1s., according to circumstances; but the fee is to be 6s. 8d., unless a larger fee is allowed by the Judge or his chief clerk.			
III. The Record and Writ clerks are directed to take the following fees:—				Where from the length of the attendance, or from the difficulty of the case, the Judge shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case to lay it before the Judge shall have required skill and labour for which no fee has been allowed, the Judge may allow such further fee, not exceeding one guinea, as in his discretion he may think fit.			
For office copies of original depositions, and examinations, per folio . . . . .	0	0	4	For preparing every advertisement . . . . .	0	6	8
For entering appearances to a Judge's summons, same charge as for appearing to a bill.				For attending to get same approved and signed . . . . .	0	6	8
For stamping every copy of a bill or claim for service . . . . .	0	5	0	For attending for every order drawn up by the chief clerk, and at the registrar's office to get same entered . . . . .	0	6	8
For stamping every copy of a Judge's summons for service . . . . .	0	5	0	For attending to enter claim under Order 36 of 16th October, 1852, and to file affidavit . . . . .	0	6	8
For examining every copy or part of a copy of a set of interrogatories, and marking same as an office copy . . . . .	0	5	0	For perusing the affidavits of claimants coming in under Order 36 of 16th October, 1852, and attending in chambers at the time appointed by the advertisement, where the number of claims does not exceed five . . . . .	1	1	0
IV. All fees received by officers of the Court, under the preceding orders, are to be accounted for and paid by them respectively, once in every month, into the Bank of England, in the name of the Accountant-General, to be placed to the account there entitled "The Sutors' Fee Fund Account;" the amount so received and paid by such officers respectively to be verified by the affidavit of the accounting party.				Where the number exceeds five, for every additional number, not exceeding five, an additional sum of . . . . .	1	1	0
V. Solicitors are entitled to charge and be allowed the following fees:—				For attending to bespeak and procure office copy of certificate or report . . . . .	0	6	8
For instructions to commence proceedings originating in chambers, or to defend the same . . . . .	0	13	4	For all other business performed such fees as by the practice of the Court they are entitled to for similar business.			
For preparing an original summons for the purpose of proceedings originating in chambers, and the duplicate thereof . . . . .	0	13	4				
For attending at chambers to get such summons and duplicate examined and sealed . . . . .	0	6	8				
For attending at the Record and Writ Office to file duplicate and examine copies, and get same stamped . . . . .	0	6	8				
For endorsing a summons and the copies under Order 6 of 16th October, 1852, and attending to get same sealed . . . . .	0	6	8				
For entering the appearance for one or more defendants, if not exceeding three . . . . .	0	6	8				
If exceeding three, for every additional number not exceeding three an additional sum of . . . . .	0	6	8				

OFFICE COPIES.—REGULATION OF THE ACCOUNTANT-GENERAL'S OFFICE.—ABOLITION OF FEES.—COLLECTION OF FEES BY STAMPS.

(Under the Sutors' Relief Act.)

25th October, 1852.

The Right Honourable Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the 15 & 16 Vict., intituled "An Act for the relief of the Sutors of the High Court of Chancery," and in pursuance and execution of all other

powers enabling him in that behalf, order and direct that all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, "General Orders and Rules of the High Court of Chancery," viz. :—

I. In lieu of copies of pleadings and other proceedings in the Court of Chancery, and of the documents relating thereto, being made and delivered by officers of the Court at the office in which they are filed or left, copies of such pleadings, proceedings, and documents (save as hereinafter excepted), are to be made, delivered, charged, and paid for according to the following regulations :—

1. The following copies are exempted from this Order, that is to say, office copies of proceedings filed in the Report Office; office copies of answers, pleas, and demurrers; office copies of depositions of witnesses, and examination of parties to be made for and taken by the party on whose behalf such depositions and examinations have been taken; office copies of affidavits to be made for and taken by the party filing the same; and office copies of affidavits to be taken under Order 37 of 16th October, 1852.

2. The party or his solicitor requiring any copy, save as hereinbefore excepted, is to make a written application to be delivered to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges.

3. Upon such requisition being made with undertaking as aforesaid, copies of such pleadings, proceedings, or documents, are to be made by the party or his solicitor filing or leaving the same, or who under the first rule may have taken office copies thereof.

4. The copies are to be ready to be delivered at the expiration of 48 hours after the delivery of such request and undertaking, or within such other time as the Court may in any case direct, and are to be delivered accordingly upon demand and payment of the proper charges.

5. The charges for all such copies are to be at the rate of 4*d.* per folio.

6. Copies of bills of costs are to be made side for side, so as to correspond with the bills of costs left in the office.

7. The folios of all copies are to be numbered consecutively in the margin thereof, and the name and address of the party or solicitor, by whom the same is made, is to be endorsed thereon in like manner as upon the proceedings in the Court; and such party or solicitor is to be answerable for the same, being true copies of the original or of an office copy of the original pleadings, proceeding, or document of which it purports to be a copy, as the case may be.

8. In cases of *ex parte* applications for injunctions or writs of *ne exeat regno*, the party making such application is to deliver copies of the affidavits upon which it is granted, upon payment of the proper charges immediately upon the receipt of such written request and

undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court.

9. Any party or solicitor who has taken any office copy mentioned in Rule 2, is to produce the same in Court, or at the Judge's Chambers, when required for the purpose of the proceedings to which the same relate.

II. That all office copies, and copies to be furnished by parties or their solicitors, shall be written on paper of a convenient size, with a sufficient margin, and in a neat and legible manner, similar to that which is usually adopted by law stationers; and in the case of copies to be furnished by parties or their solicitors, unless so written, the parties or solicitors furnishing them shall not be entitled to be paid for the same.

III. That in case any solicitor who shall be required to furnish any such copy as aforesaid shall either refuse, or for two clear days from the time when the application for such copy shall have been made shall neglect, to furnish the same, the person by whom such application shall be made shall be at liberty to procure a copy from the office in which the original shall have been filed, in the same way as if no such application had been made to the solicitor, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

IV. That in case any solicitor by whom any such copy ought to be furnished shall neglect to do so for such two clear days as aforesaid, or for one clear day, an addition of two clear days or one clear day, as the case may be, shall be made to the period within which any proceeding which may have to be taken after obtaining such copy ought to be so taken, so that the person requiring such copy may be as little prejudiced as possible by such neglect as aforesaid.

V. That the Taxing Master shall not allow any costs in respect of any copy so taken as aforesaid, unless the same shall appear to him to have been requisite, and to have been made with due care both as regards the contents and the writing thereof.

VI. That from and after the 1st day of November next, all the fees now payable in relation to such proceedings in the said Court as are mentioned in the first part of the first schedule hereinafter contained shall be abolished; and the fees specified in the second part of such schedule shall be payable, and the same (save as provided by the seventh of these Orders) shall be collected, not in money, but by means of stamps denoting the amount of such fees, stamped or affixed, at the expense of the parties liable to pay the fees, on or to the vellum, parchment, or paper on which the proceedings in respect whereof such fees are payable are written, or printed, or which may be otherwise used in reference to such proceeding.

And where any of the fees specified in the second part of the said first schedule shall be payable in respect of any matter or thing to be done by any officer, or in any office of the

Court, and it shall not have been customary to use any written or printed document or paper in reference to such matter or thing, whereon the stamp could be affixed, the party or his solicitor requiring such matter or thing to be so done, shall make application for the same, by a short note or memorandum in writing, and a stamp denoting the amount of the fee so payable shall be stamped on, or affixed to, such note or memorandum.

VII. That in all cases where the costs are directed to be paid out of a fund in Court, the fees of taxation shall not be payable by means of stamps, but shall be carried over by the Accountant-General to the credit of the Suitors' Fee Fund; and, to that intent, the Taxing Master shall in such cases certify the amount of such fees.

VIII. That from and after the 28th October, 1852, the brokerage which shall or may from time to time be received by the Accountant-General of the Court of Chancery shall be paid by him, on the first day of every month, or as soon after as conveniently may be, into the Bank of England, to be there placed to his credit as such Accountant-General to the account, entitled "The Suitors' Fee Fund Account."

IX. That, subject to the superintendence and direction of the Accountant-General of the Court of Chancery, with the approbation of the Lord Chancellor, the first, second, and third clerks in each division of the Accountant-General's office, shall, from and after the said 28th day of October, 1852, and until other order or provision shall be made in that behalf, continue to perform the acts or duties hitherto performed by such clerks, and which are mentioned in the said second schedule, in addition to the duties prescribed by Act of Parliament as heretofore; and such fees as are specified in the second schedule hereto shall be paid for such acts as aforesaid, to be accounted for in like manner as the other fees now received in the office of the said Accountant-General; and to be collected by means of stamps in like manner as provided by Order 6, and from and after the said 28th day of October, 1852, no other person shall perform such acts or duties.

And in order to enable the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, from time to time to fix the amount of the yearly salaries to be paid to such clerks, the Accountant-General shall every six months make a return to the Lord Chancellor of the amount received during the preceding six months in respect of such fees.

The FIRST SCHEDULE to which the foregoing Orders refer.

**Part I.—FEES NOW PAYABLE WHICH ARE TO BE ABOLISHED.**

**Masters' Office.**

For drawing every report exclusive of schedules of accounts of parties accounting before the Masters, and

	£	s.	d.
exclusive of the fee on signing, per folio . . . . .	0	1	0
For drawing schedules of accounts of parties accounting before the Master, per folio . . . . .	0	0	6
For taking the acknowledgment of any deed . . . . .	0	6	0
For searching for papers in a cause or matter not in immediate progress before the Master . . . . .	0	6	8
For entering accounts of receivers, consignees, and committees, per folio, in each book . . . . .	0	0	4
For entering accounts of parties accounting before the Master in a book, if required, per folio . . . . .	0	0	4
For every exhibit . . . . .	0	2	6
When a Master shall be required to attend a party to administer an oath, there shall be paid a further fee of 10s. over and besides the coachhire or reasonable travelling expenses of the Master . . . . .	0	10	0
And for copies of every document or writing made in the Master's office, and also for the transcript of every report, pursuant to the Act of Parliament 3 & 4 Wm. 4, c. 94, and the General Orders of 20th October, 1842, per folio . . . . .	0	0	4

**Registrars' Office.**

1. For every decree or order on the original hearing of the cause, and on further directions . . . . .	3	10	0
2. For every office copy thereof . . . . .	2	0	0
3. For every order on petition or motion of course, not exceeding one side . . . . .	0	3	0
4. For every additional side of such order . . . . .	0	1	0
5. For every order on other petitions, where the reference is directed, but the decision of the Master is not to be final, and also where the petition is dismissed . . . . .	0	10	0
6. For every office copy thereof . . . . .	0	10	0
7. For every order for a special injunction, or for the appointment of a receiver . . . . .	2	10	0
8. For every office copy . . . . .	1	0	0
9. For every order for payment of money out of Court, and for no other purpose, where the sum or sums thereby specifically directed to be paid shall not exceed in the whole 100l. . . . .	0	10	0
10. For every office copy thereof . . . . .	0	5	0
11. For every order of transfer out of Court, or sale of any sum or sums of government stock or South Sea Annuities (excepting Long Annuities and annuities for terms of years), and for no other purpose, where the sum or sums thereby specifically directed to be transferred or sold shall not exceed in the whole 100l. stock or annuities . . . . .	0	10	0



	£.	s.	d.		£	s.	d.
12. For every office copy thereof . . .	0	5	0	25l. per annum, or of any interest or dividends upon stock or annuities exceeding 5l. and not exceeding in the whole 25l. per annum, and for no other purpose . . .	1	0	0
13. For every order for payment out of Court of any annuity or annuities, not exceeding in the whole 5l. per annum, or of any interest or dividends upon stock or annuities, not exceeding in the whole 5l. per annum, and for no other purpose . . .	0	10	0	37. For every office copy thereof . . .	0	10	0
14. For every office copy thereof . . .	0	5	0	38. For every other order for payment or transfer out of Court . . .	2	0	0
14 a. For every office copy of every other order for payment or transfer out of Court . . .	1	0	0	<i>Report Office.</i>			
15. For every other order on special motions . . .	1	0	0	Searches, 6d. per year . . .	0	0	6
16. For every office copy thereof . . .	0	10	0	Examination of office copies for evidence, per folio of 90 words . . .	0	0	14
17. For every order on arguing exceptions . . .	2	0	0	<i>Entering Seats.</i>			
18. For every office copy thereof . . .	1	0	0	For every order or decree left for entry, containing 168 words on a side . . .	0	0	6
19. For every order on arguing pleas and demurrers . . .	1	0	0	For every certificate on Master's report . . .	0	1	0
20. For every office copy thereof . . .	0	10	0	Entering every attachment . . .	0	0	2
21. For every order on petition of appeal or re-hearing . . .	2	0	0	<i>Affidavit Office.</i>			
22. For every office copy thereof . . .	1	0	0	For filing every affidavit, with or without schedules, or other papers thereto annexed . . .	0	0	4
23. For every order on petitions not herein otherwise specified . . .	2	0	0	For the registrar's or his deputy's hand to every copy of an affidavit, with or without schedules or other papers thereto annexed . . .	0	1	0
24. For every office copy thereof . . .	1	0	0	For every search for an affidavit for each term 6d., with the liberty of reading it over, if found . . .	0	0	6
25. For every order in any matter of lunacy . . .	0	10	0	For searching for, and taking an original affidavit off the file in order to attend the Lord Chancellor or Master of the Rolls therewith, or to be made use of in any Court . . .	0	6	8
26. For every office copy thereof . . .	0	5	0	For attending therewith, at the Lord Chancellor's, or at any of the Courts at Westminster, or in London, each time . . .	0	6	8
27. For every order in any matter of bankruptcy . . .	0	10	0	For examining the copy of every affidavit, with the original, in order to make use of such copy as evidence in any other Court than the Court of Chancery . . .	0	1	0
28. For every office copy thereof . . .	0	5	0	Taking affidavits for distringas . . .	0	1	0
29. For every copy of a petition of appeal on the re-hearing, per side . . .	0	0	6	For carrying an original affidavit by the registrar, or his deputy, to any assize, for each day, including horse hire and expenses . . .	1	1	0
30. For every order on the hearing of a claim on further directions . . .	2	0	0	For trouble, attendance, and taking security to return an original affidavit to the office, when by an order of the Court such original affidavit is directed to be delivered to an associate or clerk of assize, to be made use of at the assize . . .	0	6	8
31. For every office copy thereof . . .	0	10	0	For every exhibit . . .	0	2	6
32. For every order on arguing exceptions (on claim) . . .	1	0	0	<i>Examiners.</i>			
33. For every office copy thereof . . .	0	5	0	Every witness sworn, including oath . . .	0	2	6
34. For every order (on a claim) for transfer out of Court or sale of any government stock, &c., exceeding 100l. stock or annuities; and for every order for payment out of Court of any annuity or annuities, or of any interest or dividends upon stock or annuities, exceeding in the whole 5l. per annum . . .	1	10	0	Ditto, sworn, and not examined, including oath . . .	0	5	0
35. For every office copy thereof . . .	0	10	0	Every witness examined on close holidays . . .	1	7	8
36. For every order for payment of money out of Court where the sum or sums thereby directed to be paid shall exceed 100l. and shall not exceed in the whole 500l.; and for transfer out of Court or sale of any sum or sums of government stock or South Sea Annuities (excepting Long Annuities or annuities for terms of years), when the sum or sums thereby directed to be transferred or sold shall exceed 100l. and shall not exceed in the whole 500l., and for payment out of Court of any annuity or annuities exceeding 5l. and not exceeding in the whole				Examining copy depositions, with record to prove on trial at law, if more than 40 sheets, for each sheet . . .	0	0	2

	£	s.	d.		£	s.	d.
<b>Record and Writ Clerks.</b>				For every fiat of enrolment . . . . .	0	5	6
Sealing special injunction . . . . .	1	10	0	On hearing out of Term of every			
Re-sealing any writ, or any alteration				cause, further directions, pleas, de-			
thereof . . . . .	0	3	0	murrers, and where decree is made,			
Every exemplification, per skin, exclu-				each party . . . . .	0	13	0
sive of parchment and duty . . . . .	1	14	0	On hearing of every petition in which			
Amending every office copy, if more				an order is made, the petitioner pays	0	7	0
than 10 folios, for every folio over	0	0	4	From each party, on the hearing of a			
Search for records when in record-				cause in Term time . . . . .	0	2	6
room, or for any person not being a				From each party on the hearing of a			
party in the cause, for each year				cause in Michaelmas and Hilary			
after the first year . . . . .	0	1	0	Terms only . . . . .	0	1	0
Every exhibit to an affidavit, &c. . . .	0	2	6	For papers left at the secretary's office			
<b>Taking Masters.</b>				for the Master of the Rolls on fur-			
For copies of bills of costs, and other				ther directions, exceptions, &c. . . .	0	5	0
documents, per folio . . . . .	0	0	4	For every recognisance vacated . . . .	0	6	0
For drawing every report, per folio . .	0	1	0	On the appointment of every guardian			
Per centage on amount of every bill				in Court for infants, out of Term . .	0	7	0
of costs as taxed . . . . .	2	10	0	For silk gowns.—A fee payable by			
For every exhibit . . . . .	0	2	6	each of her Majesty's counsel at-			
<b>Door-keeper of the Court of Chancery</b>				tending at the Rolls Court, for each			
For every cause heard on each side . .	0	13	0	Term . . . . .	0	12	6
In every further directions, ditto . . .	0	13	0	<b>In the Office of the Accountant-General.</b>			
In every exceptions, each set . . . . .	0	13	0	Certificate of payment in under order	0	2	0
Every appeal or re-hearing, one side . .	0	13	0	Ditto under Act of Parliament . . . .	0	4	0
Every plea, or demurrer, one side . . .	0	13	0	Certificate of transfers into Court			
Every guardian assigned . . . . .	0	13	0	under order . . . . .	0	2	0
Out of 11. paid on setting down every				Ditto under Act . . . . .	0	4	0
petition . . . . .	0	3	0	Certificate of investment of principal			
Every lunatic petition . . . . .	0	3	0	money . . . . .	0	3	6
Every witness examined <i>visâ voce</i> . . .	0	1	6	Ditto of interest money . . . . .	0	2	0
Every prisoner by <i>habeas corpus</i> . . . .	0	2	6	Certificate of sale of stock . . . . .	0	2	6
Setting down causes to be heard . . . .	1	0	0	Certificate of transfer of stock out of			
Setting down cause at Rolls . . . . .	1	0	0	Court . . . . .	0	1	6
Term fee from Attorney-General . . . .	1	10	0	Carried over . . . . .	0	2	6
Term fee from Solicitor-General . . . .	1	0	0	Deposit of Exchequer bills . . . . .	0	5	0
Upon swearing into offices before the				Delivery out of ditto . . . . .	0	5	0
Lord Chancellor . . . . .	2	12	6	Investment of principal money in Ex-			
For each Queen's Counsel per Term . .	1	12	0	chequer bills . . . . .	0	5	6
<b>Rolls Court.—Secretaries.</b>				Ditto of interest money in ditto . .	0	4	0
For drawing and copying every order				Sale of Exchequer bills . . . . .	0	5	0
of course . . . . .	0	5	6	Exchange of Exchequer bills . . . . .	0	5	0
For entering every order of course . . .	0	0	6	<b>Chancery Subpœna Office.</b>			
For entering every order for setting				For every subpœna . . . . .	0	5	6
down further directions, exceptions,				For sealing every distringas . . . . .	0	5	6
pleas and demurrers . . . . .	0	0	6	For filing affidavit . . . . .	0	1	0
For filing every petition for an order				<b>In the Office of the Secretary of Decrees and</b>			
of course . . . . .	0	1	0	<b>Injunctions.</b>			
For answering and setting down every				Enrolling Lord Chancellor's and Vice-			
petition for hearing . . . . .	0	6	6	Chancellor's decrees . . . . .	0	10	6
For setting down every cause for				The like, Master of the Rolls . . . .	0	10	6
hearing . . . . .	1	0	0	Petition to enrol, <i>nunc pro tunc</i> . . . .	0	1	0
For setting down every cause on fur-				Answering same . . . . .	0	10	0
ther directions . . . . .	0	12	6	If private seal enrolling decree, extra	0	3	9
For setting down every set of excep-				Searching if decree enrolled or <i>caveats</i>			
tions . . . . .	0	10	0	entered . . . . .	0	1	0
Ditto . . . . . demurrers . . . . .	0	10	0	<b>Part II.—FEES TO BE COLLECTED BY MEANS</b>			
Ditto . . . . . pleas . . . . .	0	10	0	<b>OF STAMPS.</b>			
Ditto . . . . . re-hearing . . . . .	1	0	0	<b>In the Judges' Chambers.</b>			
For advancing every cause . . . . .	0	10	0	For every original summons for the			
For entering every <i>caveat</i> against the				purpose of proceedings originating			
enrolment of a decree or order . . . .	0	5	0	in Chambers . . . . .	0	5	0
For every docket of decree or order				For every duplicate thereof . . . . .	0	5	0
signed by the Master of the Rolls . . .	0	2	6				
For every office copy of an order . . . .	0	0	6				

	£	s.	d.
For every other summons . . . . .	0	3	0
For every order drawn up by the chief clerk, made upon applications for time to plead, answer, or demur, for leave to amend bills or claims, or for enlarging publication, or the period for closing evidence, or for production of documents, or applications relating to the conduct of suits or matters . . . . .	0	5	0
For every other order drawn up by the chief clerk . . . . .	1	0	0
For every advertisement . . . . .	1	0	0
For every certificate or report . . . . .	1	0	0
For every certificate upon the passing of a receiver's and consignee's account, a further fee in respect of each 100 <i>l.</i> received of . . . . .	0	10	0

*In the Masters' Offices.*

For every warrant or summons . . . . .	0	3	0
For every certificate or report . . . . .	1	0	0
For taking the acknowledgment of every married woman . . . . .	1	6	8
For attending any Court per day by the clerk . . . . .	0	14	0
For every oath . . . . .	0	1	6
For every certificate upon the passing of a receiver and consignee's account, a further fee in respect of each 100 <i>l.</i> received of . . . . .	0	10	0

*In the Registrars' Office.*

For every decree or decretal order on the hearing of a cause, or on further directions; and on the hearing of a special case, including the Court fee and the charge for entry . . . . .	4	0	0
For every order for transfer or payment out of Court of an amount not exceeding 200 <i>l.</i> stock or cash, or interest on stock not exceeding 10 <i>l.</i> per annum, and for every order on petition where the petition is dismissed . . . . .	0	10	0
For every order for transfer or payment out of Court of an amount exceeding 200 <i>l.</i> , but not exceeding 500 <i>l.</i> stock or cash, or interest on stock exceeding 10 <i>l.</i> per annum, and not exceeding 25 <i>l.</i> per annum, and for every order on special motion not herein otherwise specified . . . . .	1	0	0
For every order on the hearing of claims, pleas, demurrers, exceptions, or on petitions not herein otherwise specified, or on petitions of appeal, rehearing for injunctions, receivers, and for writs of <i>ne exeat regno</i> . . . . .	2	0	0
For every office copy of a petition of appeal or rehearing . . . . .	1	0	0
For every order on petition or motion of course, including the entry thereof . . . . .	0	5	0
For every office copy of a decree or order . . . . .	1	0	0

*In the Report Office.*

Upon every application for a search . . . . .	0	0	6
For all office copies, at per folio . . . . .	0	0	4

*Affidavits.*

For filing every affidavit, with or without schedules or other papers thereunto annexed, including exhibits, if any . . . . .	0	2	6
For the copy of every affidavit, for each folio . . . . .	0	0	4
Upon every application to inspect an affidavit . . . . .	0	0	6
Upon every application for the officer to attend with an affidavit or affidavits at the Lord Chancellor's, or at any of the Courts at Westminster, or in London, each day . . . . .	0	10	0
Upon every application for the officer to carry an original affidavit to any assizes, for each day, besides reasonable expenses of officer . . . . .	1	0	0
For every deponent, affirmant, or declarant to an affidavit, affirmation, or declaration sworn, affirmed, or declared in London, or within 10 miles of Lincoln's Inn Hall . . . . .	0	1	6
Upon any application for the officer to attend an invalid, including the attendance . . . . .	0	10	0

*In the Examiners' Office.*

For filing interrogatories . . . . .	0	7	0
For all office copies, per folio . . . . .	0	0	4
For every witness sworn and examined, including oath, for each hour . . . . .	0	5	0
For every witness sworn and examined abroad (besides coach hire and reasonable expenses) . . . . .	1	7	0
If more than five miles from the Examiners' office, for the first day . . . . .	2	15	0
For every other day . . . . .	2	2	0
For attending the Lord Chancellor or the Master of the Rolls with record, per day . . . . .	0	10	0
For attending any Master at his office . . . . .	0	10	0
For attending with record in any other court or place in London or Westminster per day . . . . .	1	0	0
If in the country, per day, besides reasonable expenses . . . . .	2	0	0
Upon every application to inspect depositions, including the inspection . . . . .	0	3	0
Upon every application to examine copies of depositions, with record to prove on trial at law . . . . .	0	5	0
Upon every application to search book for causes, including search . . . . .	0	1	0
Upon every application to search book for depositions, including search . . . . .	0	1	0

N.B.—These fees will shortly cease to be payable when the new system comes into operation.

*In the Record and Writ Clerks' Office.*

For all office copies, per folio . . . . .	0	0	4
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	£	s.	d.
Filing every bill or information . . . . .	1	0	0
For filing every claim . . . . .	0	5	0
For filing every special case . . . . .	1	0	0
Upon entering every appearance, if not more than three defendants . . . . .	0	7	0
If more than three and not exceeding six defendants . . . . .	0	14	0
And the same proportion for every number of defendants.			
For sealing an attachment or distringas, for not appearing or answering . . . . .	0	8	0
For every certificate . . . . .	0	4	0
For every copy of a bill or claim to be served . . . . .	0	5	0
For every writ of summons, distringas, or subpoena . . . . .	0	5	0
For filing and entering duplicate of every Judge's summons . . . . .	0	5	0
For stamping every copy thereof . . . . .	0	5	0
For sealing every other writ . . . . .	1	0	0
For every oath, affirmation, declaration, or attestation upon honour . . . . .	0	1	6
For examining every copy, or part of a copy of a set of interrogatories, and marking same as an office copy . . . . .	0	5	0
Upon every application for a search for a record, and for searching . . . . .	0	2	0
Upon every application to inspect a record, and for inspecting the same . . . . .	0	5	0
Upon every application to inspect exhibits, if occupied not more than one hour . . . . .	0	5	0
If more than one hour, per diem . . . . .	0	10	0
Upon every application for the officer's attendance in Courts of Law per diem, and for his attendance, besides reasonable expenses of the officer . . . . .	1	0	0
Upon every application for the officer's attendance in a Court of Equity, per diem . . . . .	0	10	0
For examining and signing enrolments of decrees and orders . . . . .	3	0	0
For filing caveat against claim to revive, or against decree or order or enrolment . . . . .	0	5	0
For filing supplemental statement or statement for revivor . . . . .	0	10	0
For office copies of depositions taken before examiner, per folio . . . . .	0	0	4
<i>In the Taxing Masters' Office.</i>			
For every warrant or summons, but not more than one order or summons is to be issued on one bill, or set of bills, unless the Taxing Master shall think it necessary to issue a new warrant or summons . . . . .	0	3	0
On signing every report and certificate . . . . .	1	0	0
Upon the Master's certificate of every bill of costs, as taxed, where the amount shall not exceed 20 <i>l.</i> . . . . .	0	10	0
Upon every additional 20 <i>l.</i> or fractional part thereof, a further fee of . . . . .	0	10	0
For every oath, affirmation, or attestation upon honour . . . . .	0	1	6

*In the Lord Chancellor's Principal Secretary's Office.*

	£	s.	d.
On all attendable petitions, appeals, re-hearings, and letters missive . . . . .	1	0	0
On all non-attainable petitions . . . . .	0	10	0
On a matter of course order, on a petition of right . . . . .	0	10	0
On an order for a commission on a petition of right . . . . .	1	0	0

*In the Office of the Secretary at the Rolls.*

On every petition set down for hearing, to include the fee on hearing . . . . .	1	0	0
On the petition for every order of course . . . . .	0	7	0
On the admission of every solicitor . . . . .	1	17	0

The SECOND SCHEDULE to which the foregoing Order refers:—

*In the Office of the Accountant-General.*

1. For preparing English power of attorney with affidavit, exclusive of stamp duty . . . . . 0 3 6
2. For preparing foreign power of attorney without affidavit . . . . . 0 3 0
3. For special power of attorney . . . . . 0 5 0
4. For copies of accounts, debtor and creditor's side, per folio, as to be explained by General Order . . . . . 0 0 3
5. Upon every application for a search . . . . . 0 5 0

COURTS OF COMMON LAW.

SCALE OF COSTS ON JUDGMENTS BY DEFAULT.

WHEN a writ of summons is indorsed in the special form mentioned in section 27 of the Common Law Procedure Act, 1852, the following amount may be indorsed by the plaintiff's attorney or agent upon the writ for costs:—

*In actions above £20.*

In Town Cases . . . . .	£3	8	0
In Country or Agency Cases, including mileage . . . . .	£4	0	3

*In actions under £20.*

In Town Cases . . . . .	£2	14	0
In Country or Agency Cases, including mileage . . . . .	£3	2	0

The above costs are up to and inclusive of the costs of the judgment.

It may be proper to mention, that the Judges allowed the Council of the Incorporated Law Society to make suggestions on the items of professional business composing this scale, and a deputation attended the Masters thereon. The result has been, that a scale has been formed which appears

to be fair and reasonable towards the practitioner, considering that the utmost economy has become necessary in the administration of Justice, as well in the Superior as in the Inferior Courts.

## ETIQUETTE OF THE BAR.

### WESTMINSTER COUNTY COURT.

THE *Legal Examiner*, which is avowedly edited by E. H. J. Crauford, Esq., the Barrister, M. P. for Ayr, states authoritatively that seven members of the Bar (including Mr. Crauford) have determined to commence a regular attendance at the Westminster County Court, and for the convenience of robing, holding consultations, &c., have secured a set of chambers in St. Martin's Court, in the immediate neighbourhood of the Court-house. It is also stated "that they intend to hold themselves at liberty, upon proper occasions, to exercise their common law right of direct communication with the client." It is added, however, that "the public interest and their own convenience conduce to render them most desirous that suitors should have their cases prepared by attorneys. But (they say) as a large class of cases could not bear a fee to an attorney, and a further fee of 1l. 3s. 6d. to counsel, it is their intention, in cases under 20l., where no great difficulty is likely to arise, or much time to be consumed, to act in common with the special pleaders, and to mark half-a-guinea on their briefs."

Now, it will be recollected, that before the County Court Act of the last session passed,—in which at the last moment (without notice) an alteration was introduced, rescinding the enactment requiring counsel to be instructed by attorneys,—a comparatively small number of the junior Bar requested Sir A. Cockburn, then Attorney-General, to call a meeting for the purpose of altering the rule of the Bar on that subject; but the Attorney-General declined to convene the meeting, unless a certain number of the Bar signed the requisition, and that number not having been approached, no meeting took place, and the rule of the Bar still remains in force.

The enactment in question does not affect that rule: it merely places the County Courts on the same footing as the Superior Courts.

The time may arise when the Benchers will have to decide whether they should in any respect relax that rule, which the Judges of the Superior Courts and most of the Law Lords in Parliament have pronounced to be beneficial for the due administration of justice. But at present the rule remains unbroken in upon.

In considering the question with reference to the interest of the *sutor* (for whose benefit lawyers of both branches exist), it must be remembered, that if barristers alone are employed, the following consequences will ensue:—

1. The responsibility of the attorney for ne-

gligence or want of skill will be lost to the client.

2. The right of taxation over the charges of the advocate or legal adviser will be at an end.

3. There will be no control over the fees which the barrister, or his clerk, may require.

4. The client and his witnesses must lose their time in personally attending the barrister, instead of being called on at their places of business by the attorney.

5. The barrister will have to direct the sutor to take various steps in preparing for the trial, many of which can only be efficiently done by legal practitioners, and the sutor will not be remunerated for the time thus bestowed and the inconvenience sustained in being absent from his business.

6. The sutor will have to attend the Court personally (for which he will not be paid), instead of being represented by his attorney. Great loss and inconvenience will thus fall on the commercial and trading classes.

## THE BAR AND THE ATTORNEYS.

### MR. RANN KENNEDY'S BIRMINGHAM SPEECH.

#### *To the Editor of the Legal Observer.*

SIR,—Although in daily communication with many of the members of my own branch of the Profession, I should probably have known nothing of that tissue of bombast and egotism which Mr. Rann Kennedy presented to his admirers, male and female, at that appropriate locality "Odd Fellows' Hall," if it had not been noticed and commented upon in your pages. Permit me to observe, that you, sir, have done us scant justice when you remark, "that Mr. Kennedy's statements and opinions must not be taken as those of the Bar generally, nor even of any large section of it." The spirit and taste which dictated that address, I venture to believe, should secure the Bar from the imputation of sympathising with, or approving of, the sentiments clothed in such language, even if the offensive and disparaging statements indulged in at the expense of our branch of the Profession had been wholly omitted. The picture presented to a mixed auditory at Birmingham, represents both branches of the Profession as pretty equally entitled to public respect. Whilst the attorneys are referred to as "ruffians," "vagabonds," "rascal pettifoggers," &c., the Bar are not only described as "slaves" and "puppets in the hands of attorneys," but as accommodating and sordid knaves ready to violate or evade their own acknowledged rules and to defraud others, under the most despicable and

sordid influences. The public are asked to recognise the class under the name of Mr. Pliant as introduced in the following flattering sketch :—

"The firm of Sharp & Co. employ for their barrister in ordinary Mr. Pliant, who married a sister of Mr. Craft, one of the firm. If any one ventures to suggest that he should like to retain Mr. ——— for his cause, he is immediately, told "Mr. Pliant is our junior counsel." Thus a man speaks of his butcher or his baker. Mr. Pliant has, in the course of the year, about a hundred briefs from Sharp & Co., and about a hundred and fifty conferences on points of practice and other matters with the managing clerk. He receives his fees in one or two yearly payments, making a fair abatement for any losses sustained by Sharp & Co., and being allowed a fee for every third conference—that is, at the rate of seven shillings a piece. This is a highly beneficial arrangement for both parties. Sharp & Co., or the clients (we don't know which), get a reduction of what they must have paid on the rigid guinea rule, Mr. Pliant is brought constantly before the public, and is reputed to be a man of considerable practice; ultimately he rises to an eminent position to which Sharp & Co. boast of having raised him. Now, I say, there is nothing in the least objectionable in the arrangement between Mr. Pliant and Sharp & Co.," &c.

Now, sir, it does unfortunately, happen, that both branches of our somewhat too numerous Profession, afford instances of discreditable practitioners. It is, perhaps, impossible to prevent their intrusion into the Legal Profession, as it is found to be in the Ecclesiastical and Military Professions. If I had heard Mr. Rann Kennedy's name in connexion with his Birmingham speech, I should have concluded that his intercourse had been confined to the lowest class of practitioners. It is notorious, however, that Mr. Kennedy is related to the leading members of a firm whose respectability does not consist "in a vast accumulation of six-and-eight-pences," but in a well-deserved reputation for probity, ability, and honour. In an earlier stage of his career, those who frequented Westminster Hall, remember that Mr. Kennedy was, to use his own words, "brought constantly before the public" by the legitimate influence exercised on his behalf by the firm alluded to. How, or why, that influence came to be withheld, I care not to inquire, but I should insult Mr. Kennedy and grossly libel the eminent solicitors to whom he was indebted for so many favourable opportunities of displaying his professional ability, if I suggested the possibility of his

being "required to make a fair abatement for any losses sustained by the firm by whom he was employed," or allowed a fee for every third conference. In this instance at least, sir, I am satisfied that Mr. Kennedy has drawn upon his imagination rather than upon his experience. He has been abused by others, or has abused himself. So far as I can collect their opinion, the Bar generally regard Mr. Kennedy's statements as the ravings of a morbid and disappointed man, and are equally astonished and grieved to find that it was considered in a more serious light by some of the gentlemen who attended the meeting of the Metropolitan and Provincial Law Association at Derby. Protesting against the supposition that the eccentric course pursued by Mr. Kennedy has the sanction or approval of any section—large or small—of the Bar, I may, nevertheless, be permitted to doubt, whether the spirit in which the relations between the two branches of the Profession was discussed by some of the speakers at the Derby Meeting was calculated to advance the real interests either of the one or the other. Perhaps, on this question, in some future Number, you may be able to afford space for the views of

A BARRISTER.

Temple, 3, Nov., 1852.

## NOTICES OF NEW BOOKS.

*The Copyhold Emfranchisement Manual; comprising the Copyhold Act, 1852, (15 & 16 Vict. c. 51,) with numerous and explanatory Notes; upwards of fifty Forms required in the Proceedings; Suggestions to Lords, Stewards, and Tenants, protective of their several Interests; and to Valuers, in the performance of their duties; upwards of Twenty Rules and Tables for valuing the Lord's different Rights, with Examples; also a Statement of the Law under the previous Acts.* By ROLLA ROUSE, Esq., Barrister-at-Law, Author of "The Practical Man," &c., &c. London: Butterworths. 1852. Pp. 131.

MR. ROUSE's former works on the Copyhold Acts of 1841, 1843, and 1844, and his Book of Copyhold Practice, ensure his competency to the task of editing the New Act, of 1852. His introductory remarks and suggestions, his annotations on the Act and his practical Forms, Rules, and Tables of Valuation, are highly valuable to all persons engaged in copyhold

transactions. The work has been most carefully and accurately compiled.

We extract the following from the Preface, showing the scope of the Volume, and proving how thoroughly the subject is understood by Mr. Rouse. We doubt not that, if his advice be followed, both the copyholders and the Profession will be greatly benefited:—

"The Copyhold Acts of 1841, 1843, and 1844, applied almost exclusively to voluntary commutations and enfranchisements; being only compulsory in their provisions in cases of manorial commutations, in which a large proportion in number and interest of the lords and tenants agreeing on commutation, it was rendered compulsory on the remainder.

"The Act of 1852 renders enfranchisement compulsory, on application of either lord or tenant, where admission takes place on and after 1st July, 1853; and by an excellent clause introduced by the House of Lords (s. 27), such power to enfranchise is extended to customary freeholds subject to heriots.

"That Act also facilitates voluntary commutations and enfranchisements, by allowing them to be effected, in consideration of fines and rent-charges as well to commutations and rent-charges as to enfranchisement, fixed in money instead of being made variable according to the price of corn as under the previous Acts,—a restriction which rendered the previous Acts almost inoperative in practice.

"Whilst voluntary commutations and enfranchisements were alone provided for, and were thus restricted in the terms on which they might be made, there was comparatively but little inducement to lords, stewards, or copyholders, to make themselves acquainted with the provisions of the law; but enfranchisements being now made compulsory after a limited period, it becomes necessary that those whose interests are to be affected should qualify themselves to protect those interests in any proceedings under the late Act.

"Instead of confining themselves to that limited view of the subject, I would most strongly urge the taking a more extended view of it, as I am convinced that it will be of advantage to all parties to adopt largely and liberally the powers now given for voluntary transactions on terms beneficial to the interests of all, especially as regards commutations, by which, without any outlay worth mentioning on the part of the copyholder, all the disadvantages of copyhold tenure may be got rid of, and all the advantages retained, and in addition, facilities given for effecting subsequent enfranchisements without difficulty, and on terms just towards both lord and tenant."

The work has been prepared with a view to enable all interested parties fully to understand the subject, to avail themselves, with the greatest advantage, of the powers given by the late Act, and to determine in

each case on the best course to be adopted; numerous forms, rules, and tables are also given, and suggestions to valuers in the performance of their duties.

"To those who may wish principally to adopt compulsory enfranchisements, this work will, it is trusted, be found complete in itself, not merely as to what can be done, but as to the terms on which enfranchisements ought to be effected to do justice to all parties, and as to the expediency of the various proceedings, and the best course to be adopted by each interested party.

"To those who may desire to take the more extended view of the subject, and avail themselves of the provisions for voluntary commutation and enfranchisement, this work, with my other works on the subject, will give the information required, in order fully to understand the subject, in its legal, mathematical, and practical bearings.

"In the present and my other works, the subject is not treated of in its merely legal point of view, including the practice and forms, but is considered mathematically; such consideration of the subject being the result of many years' attention; and I confidently hope that I have given such information as may be clearly understood, may be relied on, and will enable every person to protect his interest in negotiations and arrangements, whether for commutation or enfranchisement.

"I have thought it better to give the law, practice, &c., under the late Act, with a general view of the subject, in a separate work, rather than to prepare one embodying all the Acts, and the full information applicable to all, as it will enable those who may wish to principally limit their inquiries to the provisions of the late Act, to do so at a trifling expense, and those who may wish to understand and adopt the powers in the Acts generally will be able from this and my other works to do so as readily and at less expense than had I prepared an entirely fresh work, embodying all the Acts, forms, &c.; as I must have repeated almost every page of my previous works."

The alterations made since the publication of those works are of a nature to simplify the proceedings and remedies, and would have called for scarcely any alteration.

"At the risk of being thought to give interested advice, but which I really give under the belief that it will be beneficial to those to whom it is offered, I would most strongly recommend to lords, to stewards, and to copyholders, to make themselves thoroughly acquainted with the subject of commutation and enfranchisement. Such a knowledge will qualify them to enter into arrangements beneficial to themselves, and also to those with whom they treat. They will be enabled to select the plan most applicable to the circumstances of each case, to adopt enfranchisement, where most beneficial to entirely change the tenure, and commutation when most beneficial to retain it.

"In the suggestions to lords, stewards, and

copyholders, in Part IV., the comparative advantages of the one course and the other in particular cases is pointed out; but as bearing on the importance of thoroughly considering the subject, I cannot refrain from expressing the opinion, that, in a great majority of cases, those who give such consideration will cease to entertain a prejudice against copyhold tenure, freed from its objectionable points, as it may be under a commutation, and that as a general rule commutations will be found preferable to enfranchisements; as under the former, the land may without pecuniary outlay, be freed from all uncertainty in payments, and the simplicity and safety of copyhold titles and conveyances retained.

"By a commutation of the stewards' fees (which I would strongly recommend stewards to concur in), the legal expenses attendant on future transactions with respect to the lands, will be much less and more certain in amount than those with respect to freeholds.

"In Part III. (page 91), I have given a scale of steward's fees, which I believe would be just and fair between both parties."

## LAW OF ATTORNEYS.

### PROTECTION FROM ARREST WHILST ATTENDING THE TAXATION OF COSTS.

IN the Rolls Court of Ireland a writ of *habeas corpus* was issued, directed to the Marshal of the Court, to bring up Mr. Thomas Wilson, before Edward Tandy, Esq., one of the Taxing Masters of the Court, on a certain day and at such hour and place as the Master should appoint, from day to day, until the taxation of certain bills of costs furnished by Mr. Wilson should have been duly taxed and ascertained.

It appeared that Mr. Wilson had been arrested under an attachment for non-payment of a sum of money directed to be paid by him. His affidavit stated, that he believed it was impossible for the Taxing Master to proceed with the taxation of the costs in the absence of the defendant, without injuring him, inasmuch as some of the items in the bills of costs had been incurred so far back as 1835. That the costs were very voluminous and intricate, and contained many items which the defendant must personally attend the taxation of, in order to explain and satisfy the Taxing Master in relation thereto, and as to the necessity of adopting the proceedings for which charges had been made. That having himself entirely conducted the business for which such costs were furnished, he was the only person familiar with the proceedings relating thereto, and that the defendant had no person whose assistance he could depend on to attend the taxation on his part.

Counsel cited the *Attorney-General v. Fadden*, 1 Price, 403; *Dimsdale v. Robinson*, before Sir Edward Sugden, not reported.

The Master of the Rolls made the order in the terms of the notice. *Walsh v. Wilson*, 2 Irish Reports, 79.

## PROCEEDINGS ABOLISHED UNDER THE NEW COMMON LAW ACT.

It will be useful to the practitioner to have at one view a summary of the various proceedings in an action at law which have been abolished by the Common Law Procedure Act. They are as follow:—

### *Writs for commencement of actions.*

The mention of any form or cause of action in writ of summons; s. 3.

Alias and pluries writs, and the proceedings necessary for making the first writ available to prevent the operation of Statute of Limitations; s. 10.

Testatum writ when defendant found to be in a different county; s. 14.

Writ of *distringas* to compel appearance, or to proceed to outlawry; ss. 17, 24.

### *Appearance, and proceedings in default of appearance.*

Appearance according to provisions of Acts of 12 Geo. 1, c. 29, and 2 Wm. 4, c. 39; s. 26.

### *Joinder of parties.*

The effect of non-joinder or mis-joinder of parties; ss. 34, 35.

### *Questions by consent without pleading.*

Formal pleadings, where questions of facts after writ issued are raised by consent and leave of a Judge; s. 42.

The like upon questions of law; s. 46.

### *Pleadings in general.*

Fictitious and needless averments in pleadings; s. 49.

The arrest, stay, or reversal of judgment for imperfection, omission, defect in, or lack of form; s. 50.

Objections by way of special demurrer; s. 51.

Rules to declare, or declare peremptorily, and rules to reply, and plead subsequent pleadings; s. 53.

Profert and oyer of any deed or document; s. 55.

### *Pleas and subsequent pleadings.*

Rules to plead and demand of plea; s. 62.

Express colour; s. 64.

Special traverses; s. 65.

Formal commencement and prayer of judgment; s. 66.

Rule or Judge's order to pay money into Court, except in the case of one or more of several defendants; s. 72.

Objections to pleas to actions partaking both of breach of contract and wrong; s. 74.

Rule of Court for leave to plead several matters where Judge's order made; s. 82.

Leave of Court or Judge to plead together certain pleas;<sup>1</sup> s. 84.

<sup>1</sup> Plea denying contract or debt alleged in declaration, of tender as to part, Statute of Limitations, set-off, bankruptcy of defendant,



Signature of counsel to any pleading; s. 86.

The pleading of more than one new assignment to any number of pleas to the same cause of action; s. 87.

Repetition of pleas, already pleaded to declaration, to new assignment, unless by leave of Court or Judge; s. 88.

New notice to plead to any amended pleading; s. 90.

*Judgment by default, and ascertaining amount to be recovered.*

Rule to compute; s. 92.

Writ of inquiry, where amount of damages is substantially a matter of calculation; s. 94.

*Notice of trial, inquiry, and countermand.*

Motion for rule for costs of the day for not proceeding to trial pursuant to notice, or not countermanding in sufficient time; s. 99.

*Judgment for not proceeding to trial.*

Statute 14 Geo. 2, c. 17, as to judgment in case of nonsuit; s. 100.

Sealing and passing of Nisi Prius record; s. 102.

Mittimus to Chancellor of Counties Palatine; s. 103.

*Jury and jury process.*

Writs of venire facias juratores, distringas juratores, habeas corpus juratorum, and entry jurata ponitur in respectu; s. 104.

Sidebar rule for special jury; s. 109.

Writ of view; s. 114.

*Admission of documents.*

Summons and order for admission of documents; s. 117.

*Execution.*

Ground writs directed to sheriff of county in which venue laid; s. 121.

Directing writ to Chancellor of Counties Palatine in the first instance; s. 122.

The duration of writs in force until executed; s. 124.

Writ of habeas corpus ad satisfaciendum charging in execution parson already in prison of the Court; s. 127.

*Proceedings to revive.*

Revival of judgment during lives of parties thereto, and within six years from the recovery thereof, to enable execution to issue; s. 128.

Judge's order for sci. fa. where judgment less than 10 years old; s. 134.

*Death, marriage, and bankruptcy.*

Abatement of action by death of plaintiff or defendant; s. 135.

Error by reason of death of either party be-

tween verdict and judgment, where judgment entered within two Terms after verdict; s. 139.

Abatement of action by marriage of plaintiff or defendant; s. 141.

Abatement by bankruptcy or insolvency of plaintiff, where assignees elect to continue and give security for costs; s. 142.

*Error.*

Error from judgment brought more than six years from signing same or entry of record; s. 146.

Writ of error; s. 148.

Assignment of and joinder in error; s. 152.

Transcript being brought in Court of Error; s. 155.

Abatement by death of plaintiff in error; s. 161.

Abatement by death of defendant in error; s. 164.

Abatement by marriage of plaintiff or defendant in error; s. 167.

*Ejectment.*

Commencement of action of ejectment by declaration; s. 168.

Consent rule; s. 171.

Abatement by death of claimant or defendant; s. 190.

Leave of the Court to discontinue action as to one or more defendants; s. 200.

Cognovit actionem, where defendant desires to confess an action; s. 203.

Formal entry of judgment on the Roll before issuing execution; s. 206.

*Courts of Common Pleas at Lancaster and Pleas at Durham.*

Provisions of 4 & 5 Wm. 4, c. 62, and of 2 & 3 Vict. c. 16, relating to duration of writs, to alias and pluries writs, and to proceedings to prevent operation of Statute of Limitations; s. 234.

## NOTES OF THE WEEK.

### EQUITY SITTINGS AT WESTMINSTER REMOVED TO LINCOLN'S INN.

It will be observed by the daily papers, that Mr. Malins and Mr. Campbell, supported by Mr. Roundell Palmer, Mr. Willcocks, Mr. Daniel, and Mr. Lake Russell, applied to the Lord Chancellor to adjourn the Sittings from Westminster to Lincoln's Inn. His Lordship at first expressed some hesitation on the subject, but no member of the Bar opposed the motion, and for the present Term, therefore, he adjourned to Lincoln's Inn, and expressed his intention to inquire into the matter, and consider what ought to be the settled course hereafter.

Now, we submit, is the time to apply to Parliament for the permanent removal of all the Courts, both of Law and Equity, to the neighbourhood of Lincoln's Inn. The Incorporated Law Society will of course continue their exertions on this important subject. Amongst several additional reasons in support of the mea-

discharge under Insolvent Act, plene administravit, plene administravit preter, infancy, coverture, payment, accord and satisfaction, release, not guilty, denying property injured is plaintiff's, leave and license, son assault demesne, and any other pleas which shall be directed by any General Rule or Order.

sure, since it was last before Parliament, may be mentioned the impracticability of carrying out the Equity Reforms by the Judges sitting in Chambers, if they are to be at Westminster, and their chief clerks in the Rolls Yard and Lincoln's Inn.

## HOUSE OF LORDS.

The Lord Chancellor will sit in the House of

Lords, on Appeals, on Mondays, Tuesdays, Thursdays, and Fridays.

## LAW APPOINTMENT.

C. R. M. Jackson, Esq., the present Advocate-General of the East India Company at Calcutta, is to be appointed Puisne Judge at Bombay, in the room of Sir Wm. Yardley, promoted to the Chief Justiceship at that Presidency.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

## Lord Chancellor.

*Hickling v. Boyer.* Nov. 2, 1852.

WILL.—CONSTRUCTION.—SPECIFIC DEVISEE OF LEASEHOLDS.—LIABILITY TO REPAIR.—RESIDUARY LEGATEE.

*A testatrix bequeathed leaseholds to A., his executors, administrators, and assigns, absolutely, for the residue of her term therein, subject to the payment of the rent and performance of the covenants (one of which was to keep in repair) reserved and contained in the lease under which she held, and she gave her residuary estate, subject to the payment of her debts, funeral and testamentary expenses, to B., his executors, administrators, and assigns absolutely. The property was out of repair at the death of the testatrix, and A. was since dead: Held, on petition of re-hearing presented by A.'s personal representative (who had not been served) in accordance with leave reserved by Lord Chancellor Truro, that A.'s representative was only liable to the extent of the assets in her hands, and so much, therefore, of the order as directed the representative to do the repairs, &c., would therefore be struck out.*

It appeared that the testatrix, Zillah Taylor, by her will, dated in October, 1837, bequeathed certain leasehold property to Richard Ashby, his executors, administrators, and assigns absolutely during the residue of her term therein, subject to the payment of the rent and performance of the covenants reserved and contained in the lease under which she held the same, and as to her residuary real and personal estate, subject to the payment of her debts, funeral, testamentary, and other expenses, she gave, devised, and bequeathed the same to James Boyer, his heirs, executors, administrators, and assigns, absolutely. It also appeared that the lease, dated in April, 1803, under which the testatrix held the premises, contained a covenant to keep in repair, and that at the time of her decease, in September, 1839, dilapidations had taken place. The Vice-Chancellor *Wigram* had directed that a sum of 1,500*l.* stock should be set aside to indemnify the executors against liabilities in respect of the repairs and letting Mr. Ashby into possession. Mr. Ashby died in 1847, and his

personal representative, Mary Griffin, had not been served with the petition of re-hearing. Lord Chancellor *Truro* having held, that Mr. Ashby took the property *cum onere*, and was liable as between himself on the one hand, and the executors of Zillah Taylor and her residuary legatee on the other, to do the repairs in respect of the dilapidations existing at the testatrix's death and also that her executors were entitled to receive from Mr. Ashby an indemnity in respect of the dilapidations which had taken place during their testatrix's lifetime, before he was let into possession, and directing Mary Griffin to deliver up possession of the premises, and to do all necessary repairs, but reserving to his personal representative an opportunity of contesting the order by presenting her petition of re-hearing, the petition now came on for hearing.

*Hardy* in support; *Shapter* for the representatives of the residuary legatee; *Teed* for the executors.

The Lord Chancellor said, that the petitioner was only liable to the extent of the assets in her hands, and so much, therefore, of the decree as directed her to do the repairs, &c., would be struck out.

## Lords Justices.

*In re Hall's Estate.* Nov. 3, 1852.

LAW OF EVIDENCE AMENDMENT ACT.—CERTIFICATE OF BAPTISMS.—SIGNATURE BY CURATE.

*Held, that the signature of a certificate of baptism, burial, &c., signed by the curate is sufficient under the 14 & 15 Vict. c. 99, s. 14, although there is at the time a resident rector or vicar in the parish.*

THIS was an application as to the admission in evidence of certain certificates of baptisms, burials, &c., required in this case, and which were attested as follows:—"The above is a true copy of the register of death of —, in the parish of —," *J. S.*, "vicar," or *J. S.*, "curate." The registrar had objected to the sufficiency of the attestation by the curate, there being at the time a resident rector or vicar.

By sect. 14 of the 14 & 15 Vict. c. 99, it is

enacted, that "whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract thereof shall be admissible in evidence in any Court of Justice," "provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted."

And by the 52 Geo. 3, c. 146, s. 1, the registers of public and private baptisms, marriages, and burials shall be made and kept by the "rector, vicar, curate, or officiating minister of every parish."

*Forster* in support.

The Lords Justices held, that the copies must be received in evidence.

#### Vice-Chancellor Turner.

*In re Caddick.* Nov. 3, 1852.

LANDS' CLAUSES' ACT.—INVESTMENT OF PURCHASE-MONEY IN LAND.—PETITION.—PRACTICE.

*Upon a petition for the investment of purchase-money paid into Court, under the 8 Vict. c. 18, in real estate, an affidavit was required that the purchase was a proper one, and the petition was directed to stand over for the opinion of a conveyancing counsel, appointed under the 15 & 16 Vict. c. 80, s. 41, as to title, in accordance with sect. 56 of the 15 & 16 Vict. c. 86.*

*Butler* appeared in support of this petition under the 8 Vict. c. 18, (the Lands' Clauses' Consolidation Act), for the investment in the purchase of an estate of money paid into Court under the Act.

The Vice-Chancellor said, there must be an affidavit to satisfy the Court that the purchase was a proper one, and the petition would stand over for the opinion, under the 15 & 16 Vict. c. 86, s. 56, of one of the conveyancing counsel appointed under the 15 & 16 Vict. c. 80, s. 41, and upon his certificate of good title, an order would be at once made on the original petition.

*Martin v. Hadlow.* Nov. 3, 1852.

IMPROVEMENT OF THE JURISDICTION IN EQUITY ACT.—ABATEMENT BY DEATH.—ORDER.

*Where a claim has abated by the death of a defendant, held, that under the 15 & 16 Vict. c. 86, s. 52, it is necessary to obtain an order to revive, and for the usual decree in a supplemental suit.*

This was a motion for an order under the 15 & 16 Vict. c. 86, s. 52,<sup>1</sup> to revive this

claim against the executrix of a deceased defendant.

*Forster* in support.

The Vice-Chancellor said, the simple order would not be sufficient, but it was also necessary to obtain an order to revive and the usual decree in a supplemental suit, as the section applied to claims as well as to bills of revivor and supplement.

*Tait v. Leithead.* Nov. 3, 1852.

IMPROVEMENT OF JURISDICTION IN EQUITY ACT.—CREDITORS' CLAIM.—ABATEMENT.—ADMINISTRATION OF ASSETS.

*Where an order was sought, upon the abatement of a creditors' claim by the death of a defendant executor, to bring the administration de bonis non, taken out by one of the creditors, and the executors of such defendant before the Court, and for such executors to admit assets or account in the usual manner:* Held, that the common order under section 52 of the 15 & 16 Vict. c. 86, was not sufficient, and leave was therefore given for a supplemental claim to be filed.

This was a claim on behalf of two creditors for the administration of a testator's estate against the two executors of his will, and the usual administration decree had been made. The executor, who was within the jurisdiction, had died after receiving assets, and appointed two executors by his will. One of the joint creditors who had the carriage of the decree took out administration de bonis non to the original testator. This motion was now made for leave to file a supplemental claim to bring the administration and the executors of the deceased defendant before the Court, and praying that such executors might admit assets or account in the usual manner. He referred to sect. 52 of the 15 & 16 Vict. c. 86, as to whether it was necessary to file such claim.

The Vice-Chancellor said, that as the motion went further than the common order to revive and usual supplemental decree, the case was not affected by the section referred to, and also intimated that the supplemental claim for the filing of which leave was given must be printed.

#### Vice-Chancellor Kindersley.

*Jones v. Woods; Cox v. Taylor.* Nov. 2, 3, 1852.

IMPROVEMENT OF JURISDICTION IN EQUITY ACT.—ABATEMENT IN PENDING SUITS.

*Held, that the provisions of section 52 of the*

*bility, it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive, or of the usual supplemental decree, may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability."*

<sup>1</sup> Which provides, that, "upon any suit in the said Court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or lia-

15 & 16 Vict. c. 86, are applicable to suits which have abated before that Act came into operation.

THESE were applications under the 15 & 16 Vict. c. 86, s. 52, for an order to revive these suits, which had abated before the Act came into operation.

*Karslake* in support of the application in the first suit; *Elderton* in the other.

The Vice-Chancellor, after consulting the other Judges, said, they were of opinion that the Act applied where the suits had abated before it came into operation, and made the orders accordingly.

*Macleod v. Annesley.* Nov. 3, 1852.

COMMISSION TO EXAMINE WITNESSES IN DUBLIN.—BREACH OF TRUST AS TO INVESTMENT OF FUNDS.

A commission was directed to issue for the examination of witnesses in Dublin, on behalf of the plaintiff, who charged with a breach of trust the defendants, for investing in leasehold estates in Ireland certain funds held in trust for investment in real estates.

THIS was a motion for the issue of a commission to examine witnesses in Dublin on behalf of the plaintiff, who was entitled to certain funds in the hands of the defendants as trustees for their investment in real estate. It appeared that they had bought a leasehold estate in Ireland, and the plaintiff, upon coming of age, filed this bill charging them with a breach of trust.

*Makins* in support; *Bacon* and *Karslake*, contra.

The Vice-Chancellor granted the application.

Vice-Chancellor Stuart.

*Flott v. Mullins.* Nov. 2, 1852.

IMPROVEMENT OF THE JURISDICTION IN EQUITY ACT.—PRODUCTION OF DOCUMENTS.

Held, that it is necessary on a motion under section 20 of the 15 & 16 Vict. c. 86, for the production of documents by the plaintiff in a suit, to state the nature of the documents sought to be produced, and that the plaintiff had documents in his possession relating to the matters in dispute in the suit. A motion seeking the production of all documents in the possession or power of the plaintiff, &c., was therefore refused with costs.

The notice of motion was dated 28th October, the Act coming into operation on Nov. 2: a preliminary objection, that the defendant was not in a position to move, was overruled.

THIS was a motion under the 15 & 16 Vict. c. 86, s. 20, for the production of all docu-

ments in the possession or power of the plaintiff, relating to the matters in question in the suit. It appeared that the notice of motion was dated Oct. 28, and that the Act came into operation on Nov. 2.

*Russell* and *W. W. Cooper* for the defendant, in support; *Makins* and *H. Humphreys* for the plaintiff, contra.

The Vice-Chancellor, after overruling a preliminary objection, that the defendant was not in a position to move upon the notice which had been given, said, that the Court could not act without some statement of the nature of the documents sought to be produced, and it should also be shown, that the plaintiff had documents in his possession relating to the matters in dispute in the suit. The motion was therefore refused with costs.

Court of Queen's Bench.

*Regina v. Barronet and another.* Nov. 3, 1852.

ADMISSION TO BAIL OF SECONDS IN DUEL WHERE PRINCIPAL KILLED.—CONFESSION.

Held, that the defendants who had confessed being accessaries to a duel in which their principal was killed, were not entitled to be admitted to bail on *habeas corpus*.

THIS was a motion for a rule nisi to bring up the defendants on *habeas corpus* in order to be admitted to bail, and to bring up the depositions upon which they had been committed to take their trial for wilful murder. The defendants were Frenchmen, and were seconds to Mons. Frederic Courmet, at the duel in which that gentleman was killed, and they had made a statement acknowledging they had witnessed the death.

*M. Chambers* and *Parry*, in support, cited *Regina v. Scaife*, 9 Dowl. P. C. 553; *Rev. Mr. Allen's case*, Annual Register for 1782.

The Court said, that as the defendants had confessed they were accessaries to the duel, the application could not be granted.

Court of Exchequer.

*Doe dem.* — v. *Roe.* Nov. 2, 1852.

COMMON LAW PROCEDURE ACT.—EJECTMENT.—PRACTICE WHERE ACTIONS COMMENCED BEFORE PASSING OF.

Held, that the provisions of the 15 & 16 Vict.

ant in any suit, whether commenced by bill or by claim, but as to suits commenced by bill where the defendant is required to answer the plaintiff's bill, not until after he has put in a full and sufficient answer to the bill, unless the Court shall make any order to the contrary, to make an order for the production by the plaintiff in such suit, on oath, of such of the documents in his possession or power relating to the matters in question in the suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just."

<sup>1</sup> Which enacts, that "it shall be lawful for the Court, upon the application of any defend-

*c. 76, as to actions of ejectment do not apply to actions pending before that act passed.*

*A rule was accordingly granted for judgment as in case of nonsuit against the casual ejector, where the declaration was dated June 16.*

THIS was an action of ejectment upon a declaration dated on June 16, and before the passing of the 15 & 16 Vict. c. 76.

Cole now moved for judgment as in case of nonsuit against the casual ejector. It appeared the Master entertained a doubt whether the new Act did not apply. He referred to sect. 168, which enacts that, "instead of the present proceedings by ejectment, a writ shall be issued, directed to the persons in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the writ with reasonable certainty."

The Court said, that the new Act did not apply to actions of ejectment which were pending at its passing, and that in those cases the lessor of the plaintiff must proceed according to the former practice. The rule was therefore granted.

*Davis v. Walton and another.* Nov. 3, 1852.

ACTION TO RECOVER DAMAGES FOR OVERLAPPING WHARF.—CUSTOM.

*In an action brought to recover damages for the defendants' overlapping the plaintiff's wharf, the defendants pleaded a custom of London to overlap while unloading, for a reasonable time. The plaintiff obtained a verdict for 40s., and the Judge refused to certify: Held, discharging a rule nisi for the allowance of the plaintiff's costs, that this was not a claim in respect of an incorporeal hereditament or franchise, and should not, therefore, have been brought in this Court.*

THIS was a rule nisi for the plaintiff's costs in this action, in which he had recovered a verdict, with 40s. damages, and which was brought to recover damages against the defendants, the occupiers of an adjoining wharf, for overlapping the plaintiff's premises. The defendants pleaded, that by a custom of London the proprietors of wharves were entitled to overlap their neighbour's premises for a reasonable time while unloading. The Lord Chief Baron Pollock, before whom the trial took place, refused to certify for costs, and this rule had therefore been obtained.

*Hawkins* showed cause; *Lush* in support.

The Court said, that there was no ground for contending this was a claim in respect of an incorporeal hereditament or franchise, and should not therefore have been brought in the Superior Court, and the rule was accordingly discharged.

### Court of Bankruptcy.

(Coram Mr. Commissioner Goulburn.)

*In re Colquhoun.* Nov. 1, 1852.

BANKRUPT. — SOLICITOR. — SECOND CLASS CERTIFICATE.

*The Court will not grant a certificate of the first class to a solicitor who has only kept a cash-book, although well balanced, and memoranda and diaries, nor unless he be accurate in his book-keeping—putting down every transaction with care and minuteness, and balancing his books from time to time, and ascertaining the position of his affairs. Nor where the bankrupt had purchased estates with moneys borrowed at 5 per cent. interest, when he had not looked into his books to see if he were justified in so doing. An immediate certificate of the second-class was therefore granted where there had been no preference of creditors, and a statement of accounts with great truth and accuracy, and the greater part of them had been got in, and as the failure could not be said to have wholly arisen from unavoidable losses and misfortunes.*

THE Court, in delivering judgment upon the adjourned certificate meeting of this bankrupt, a solicitor at Woolwich, said, that in this case the bankrupt must be acquitted of all intention to deceive, or to do anything wrong or approaching to fraud. But it was also necessary to inquire whether he had conducted himself with due and proper caution, and had done all he could to guard against the possibility of those trusting him being injured by his conduct, and for this purpose he was especially called upon to be accurate in his book-keeping—in putting down every transaction with care and minuteness, and in balancing his books from time to time, and observing how they went on. And the Court could not adopt the view that it was impossible for a solicitor to do this. It was not enough for him to produce a cash-book well balanced, together with memoranda and diaries, and to ask that an accountant might be employed, at great expense, to analyse them. It might show the bankrupt was an honest man, but it could not absolve him from the necessity of ascertaining how he was going on, and if he had done so, he must have seen the necessity of a rigid inquiry into his affairs. It also appeared that the bankrupt was in the habit of purchasing estates with money which he was obliged to borrow at 5 per cent. interest, and he should have looked into his books to ascertain if he was justified in so doing. There were a great many points, however, to entitle the bankrupt to the favourable consideration of his creditors. He had not attempted to prefer any one creditor, and had stated his accounts with great truth and accuracy, and the greater part of them had been got in. But as it could not be said that his failure had wholly arisen from unavoidable losses and misfortunes, he was not entitled to more than an immediate certificate of the second class.

*Lawrance* for the bankrupt; *Bower*, for the assignees, did not oppose.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, NOVEMBER 13, 1852.  
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## MEETING OF PARLIAMENT.

### PROJECTED LAW REFORMS.

THE commencement of the legal year has been followed quickly on this occasion by the opening of the first Session of a New Parliament. Regarding the latter event merely in connexion with the interests and prospects of that Profession to which this publication has been so long devoted, and wholly irrespective of considerations of party or general politics, we are disposed to look upon it as more than ordinarily important. Parliament has entered upon its legislative functions under circumstances rendering it more than probable, that if not distracted or checked by political combinations, measures relating to the law, its administration, and the status and privileges of those attached to it professionally, will occupy no inconsiderable share of the attention of the great council of the nation. The composition of the Legislature, the manifest disposition of the Government to promote law amendment, the necessity for further changes to complete those already initiated, and the favour and attention with which every scheme of law reform is regarded by the public press, combine to assure us, that the period of transition has not passed, and that the work of re-casting our Legal Institutions is destined to proceed for some time longer. The present House of Commons, it will be remembered, contains not only more than the usual average number of lawyers, but many of a class distinguishable from that which heretofore sought for or obtained seats in Parliament. The lawyers in former Parliaments belonged, for the most part, to one of two great divisions: nominal members of the Profession who had never practised or had retired from practice; and barristers with leading busi-

ness in the Courts of Law and Equity or on the Circuits. The present House of Commons contains several barristers, and some few members of the larger branch of the Profession, who, though in actual practice, do not enjoy leading business, and are, in common with the great majority of their brethren, struggling for distinction and desirous of professional occupation. No one supposes, we presume, that Parliament will be less entitled to the respect of the public, or that the character of the Profession will be injuriously affected, by having some dozen lawyers in the House of Commons, who do not rank amongst the leaders of the Profession. On the contrary, the indifference with which professional interests have been treated by many who might have been regarded as their legitimate guardians, causes us to rejoice at finding in the House some members who, with practical knowledge as lawyers, combine leisure to attend to questions of law amendment. It is more than probable, however, that every lawyer of this class who has a seat in Parliament, has some favourite project of his own, to which he will be desirous of obtaining the sanction of the Legislature; and it is needless to observe, that the measures introduced under such auspices will require to be carefully watched, examined, and considered.

It has been the *rule* with a certain clique of law reformers to designate as "obstructives" all persons clothed with authority who refuse their immediate assent to any of the schemes which the proposers are pleased to consider as improvements. The late Lord Chancellor (Truro) was bitterly and unjustly assailed whilst he held office, because he refused to lend the sanction of his experience to experiments he neither understood nor approved of. When Lord St. Leonards succeeded to the Woolsack,

the same far-seeing and candid censors confidently prognosticated, that he would prevent and discourage every attempt to reform the Courts at Westminster. The history of the last six months shows that in that limited period the present Lord Chancellor has done more, not merely to promote, but absolutely to effect, practical law reforms than any of his numerous predecessors. It is probable his lordship would have resisted petty changes tending only to unsettle, but when the opportunity offered for a law reform of a comprehensive character, promising to afford a remedy for acknowledged evils, Lord St. Leonards not only took upon himself the responsibility of conducting and directing the necessary measures, but devoted himself with astonishing zeal and assiduity to the accomplishment of a most arduous task. That a spirit so resolute and indefatigable can rest satisfied with what has been effected, or stop short until the full complement of the good he deems practicable has been secured, is neither to be expected nor wished.

Considering the prominent place which the Acts for the amendment of the Law hold, in reference to the legislation of the last Session, and the commendable spirit in which all parties united to advance and perfect the measures introduced by Government, it is but natural that her Majesty's Speech, upon meeting the new Parliament, should advert, in terms of congratulation and approval, to the recent reforms in the administration of the law, and should indicate an intention to proceed, in a similar spirit, with other measures of legal improvement that are considered expedient or necessary. Accordingly, we find in the Speech delivered by her Majesty, on Thursday, the following paragraph:—

"The subject of Legal Reform continues to engage my anxious attention. The Acts passed in the last Session of Parliament have been followed by the Orders necessary for putting them into operation; inquiries are in progress, by my direction, with a view of bringing into harmony the testamentary jurisdiction of my several Courts; and Bills will be submitted to you for effecting further improvements in the administration of the law.

"To these, and other measures affecting the social condition of the country, I am persuaded that you will give your earnest and zealous attention," &c.

Frequent and more suitable opportunities will arise for discussing the measures relating to the law understood to be in preparation and shortly to be submitted to Parliament. It is matter of general con-

gratulation, however, that the *reform of the Ecclesiastical Courts*, for which the public mind has been long prepared, is not likely to be much longer delayed. Those institutions, in their present state, are manifestly unsuited to the exigencies, and not in unison with the spirit of modern society. They exhibit all the systematic vices and abuses of other jurisdictions, in addition to many peculiar to themselves. It would be premature and useless to speculate upon the changes intended, until they have been definitively announced; but we find it was stated by Lord Brougham, at a public meeting of the Law Amendment Society, and confirmed by Mr. Macqueen, the Secretary to the Divorce Commission, that the Commissioners had agreed to recommend that acts of divorce should in future be obtainable without the preliminary proceedings now indispensable, *i. e.*, without requiring the applicant for relief to show that he had obtained a verdict in a Court of Law, or a sentence of divorce *a mensâ et thoro* from the Ecclesiastical Courts. The just expectations of the public will not be satisfied, however, unless some means are devised by which relief by divorce may be obtained, without such a pecuniary outlay as practically closes the doors of justice against all but the wealthy class.

Declining to give currency to the mere gossip of the Profession, or circulation to rumours which may not outlive the instant of their publication, those to whom the conduct of the *Legal Observer* is committed will endeavour to fulfil their duty to the Profession, by affording early and *accurate* intelligence of all legal changes of importance contemplated or introduced in Parliament, in such a form and with such details as will enable our readers to arrive at an independent judgment upon the merits, whilst the liberty is reserved for ourselves of freely, but temperately, objecting to that which is deemed objectionable—come from what quarter it may—and as freely supporting and approving of that which is conscientiously believed to be beneficial to the Profession and the public.

## NEW PRACTICE IN THE COURTS OF LAW AND EQUITY.

As might have been anticipated from the nature and extent of the changes introduced in the system of practice and procedure by the Acts of last Session, and the New Rules and Orders, great difficulty, uncertainty, and confusion have prevailed since the com-

mencement of Term, in the offices of all the Courts. Not only the practitioners, but the officers of the Courts are at fault upon what were formerly considered mere matters of routine, and some time must be expected to elapse before either the one or the other can accommodate themselves to the altered state of things.

In the offices of the Court of Chancery, we are informed that great inconvenience is produced and much discontent has arisen, in consequence of the operation of that portion of the Orders of the 25th October, which requires the *payment of fees by stamps*. It will be remembered, that not only the fees heretofore payable upon the receipt or delivery of papers, but fees paid in any office, when no written or printed paper or document was used, are now directed to be stamped.<sup>1</sup> It seems that even when the proper amount of the stamp is ascertained, the law stationers are found not to have been yet supplied with stamps of the requisite amount or denomination, and that annoyance, delay, and expense have been incurred which would be intolerable, if there was not reason to hope that they might be prevented hereafter, when the necessary arrangements are made.<sup>2</sup>

In the Courts of Common Law, the question we ventured in a late Number<sup>3</sup> to anticipate, in reference to the operation of the Act 15 & 16 Vict. c. 76, upon depending proceedings, has been mooted in two or three instances. At the commencement of Term the clerks in the Masters' Offices of the several Courts, refused to receive the ordinary motion papers for judgment against the casual ejector, in cases where a declaration in ejectment was delivered before or during the Long Vacation; but upon application to the Court of Exchequer, it was at once determined,<sup>4</sup> that although the proceeding against the casual ejector were abolished in actions brought under the authority of the Common Law Procedure Act, the suitor was not prevented by that Act from availing himself of the practice previously established in actions commenced before the

passing of the Act. In a more recent case, the point was discussed in the Court of Common Pleas, in reference to the validity of a *special demurrer* delivered before the passing of this Act. Section 57, as the reader will remember, provides, that "no pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer," and it was argued in the case referred to, that as the Act came into operation on the 24th October, a special demurrer was now a mere nullity, upon which the Court had no authority to pronounce a judgment. The Court avoided any decision upon the question raised, as to its authority to entertain a special demurrer, by pronouncing the plea demurred to, bad in substance, and therefore bad upon a general demurrer; but a very strong opinion was expressed from the Bench, that the Act ought not to be construed so as to interfere with the vested rights of parties who had commenced actions before its passing.

The Sittings at Nisi Prius in Term have made apparent an omission in the Common Law Procedure Act of some importance. By rule Hil. T., 2 Wm. 4, the successful party, upon a trial, was at liberty to sign judgment in four days after the return of the writ of *distringas juratores* or *habeas corpora juratorum*. By sect. 104 of the new Act, these writs are to be no longer used; and though sect. 120 provides, that a party obtaining a verdict in a *cause tried out of Term*, shall be entitled to issue execution in 14 days, unless the Judge or Court orders it to issue at an earlier or later period, no provision whatever is made by the Act as to the time when judgment may be signed or execution issued, upon a verdict obtained in a *cause tried in Term*. This omission has been brought to the notice of the Judges, who have intimated, that they will probably think it expedient to issue a general rule, applicable to all the Courts, fixing the time within which judgment may be signed upon causes tried in Term. The Judges seem to be of opinion, that meanwhile, and until such general rule comes into operation, application should be made, in each particular case, to the Judge presiding at Nisi Prius, to order that judgment may be signed, in conformity with the verdict, at a specified time. The Judges sitting at Nisi Prius, when such applications have been made, have usually, and in conformity with the old practice, ordered that judgment may be signed in four days.

In the Courts of Equity there appears to

<sup>1</sup> Orders in Chancery, under the Suitors' Relief Act, No. 6, and Schedule, part 2, printed *ante*, p. 7.

<sup>2</sup> It is expected that at several of the offices, if not all, provision will be made for the supply of stamps in the offices. Notice of this has already been given in the Registrars' Office. For further information on the subject, see *post*, p. 31.

<sup>3</sup> Vol. 44, p. 509.

<sup>4</sup> In *Doe dem. Roe*, reported *ante*, p. 9.



be no sensible diminution of business. The present complaint of the practitioners is, that they know not how to proceed, and seek in vain for instruction from the officers of the Courts. In the Courts of Common Law, however, the usual Term business has been so much reduced that the Judges have appointed the Sittings in Error to be holden in Term, a practice which had been discontinued for several years in order that the ordinary business of the Courts might not be interrupted. The effect of this arrangement will be, to give the Judges, who do not preside at Nisi Prius after Term, the indulgence of some days leisure more than they have heretofore enjoyed.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### PROPERTY OF LUNATICS.

15 & 16 VICT. c. 48.

Powers and provisions of the 11 G. 4 and 1 Wm. 4, c. 65, s. 28, extended to other cases and purposes; s. 1.

Modes in which further maintenance may be charged; s. 2.

By whom jurisdiction to be exercised. The foregoing provisions to be incorporated with the recited Act; s. 3.

8 & 9 Vict. c. 100, s. 95. Power to receive dividends of stock in lunatic's name; s. 4.

Indemnity to Bank of England, &c.; s. 5.

Receiver may, under order, make repairs, leases, &c.; s. 6.

Interpretation of words; s. 7.

The following are the sections of the Act:—

An Act for the Amendment of the Law respecting the Property of Lunatics.

[30th June, 1852.]

Whereas by an Act of Parliament passed in the 1 Wm. 4, c. 65, s. 28, intituled "An Act for consolidating and amending the Laws relating to Property belonging to Infants, Females, Idiots, Lunatics, and Persons of unsound Mind," a power is given of ordering any land of any lunatic to be sold, or charged and incumbered by way of mortgage, or otherwise disposed of, for the purpose of raising money for the payment of debts, and other purposes therein-mentioned, and provision is thereby made as to the surplus monies; and it is expedient that such powers should be enlarged, and that the several provisions of the said Act relative thereto, and to the application of the money raised, and the quality of the surplus

monies, should be extended accordingly: Be it enacted as follows:

1. The aforesaid power of selling, or charging and incumbering by way of mortgage, or otherwise disposing of the land of any lunatic, and the aforesaid provisions relating thereto, or to the application and quality of the monies to be raised, and every of them, is and are hereby extended so as to be applicable to and to include any estate or interest of any lunatic in land or stock, in reversion, remainder, or expectancy, and so as to authorise the payment out of the moneys to be raised of any expenditure made or debt incurred after inquisition found for the maintenance or otherwise for the benefit of the lunatic, and the payment of or provision for the expenses of his future maintenance, and the costs of such sales, charges, and incumbrances, and other dispositions as are hereby or by the said recited Act authorised.

2. In case of a charge or mortgage being made by order upon an interest in contingency, or in reversion, remainder, or expectancy, for the expenses of future maintenance, the order may direct the same to be payable and paid, either contingently, if the interest charged be a contingent one, or upon the happening of the event if the interest be depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times, in such manner, and either with or without interest, as shall be deemed expedient, and any charge already made which would have been valid if made after this Act shall be and is hereby declared to be valid.

3. The powers so given by the said Act as aforesaid, and the powers hereinbefore given, may be exercised by and are hereby given to the person or persons for the time being intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, and of unsound mind; and the foregoing provisions shall, as to jurisdiction, and also as to the interpretation of expressions, and in all other respects, so far as may be consistent with the meaning of this Act, be deemed to be incorporated with the said Act.

4. And whereas by an Act of Parliament passed in the 8 & 9 Vict. c. 100, s. 95, intituled "An Act for the Regulation of the Care and Treatment of Lunatics," it was enacted, that when any person should have been received or taken charge of as a lunatic upon an order and certificate, or an order and certificate, in pursuance of the provisions of the said Act, or of any Act thereby repealed, and should either have been detained as a lunatic for the 12 months then last past, or should have been the subject of a report by the Commissioners in pursuance of the provision therein contained, it should be lawful for the Lord Chancellor to direct that one of the Masters in Lunacy should, and thereupon one of the said Masters should, personally examine such person, and should take such evidence and call for such information as to such Master should seem necessary to satisfy him whether such person was a lu-

natic, and should report thereon to the Lord Chancellor, and such report should be filed with the Secretary of Lunatics; and it should be lawful for the Lord Chancellor from time to time to make orders for the appointment of a guardian, or otherwise for the protection, care, and management of the person of any person who should by any such report as last aforesaid be found to be a lunatic, and such guardian should have the same powers and authorities as a committee of the person of a lunatic found such by inquisition then had, and also to make orders for the appointment of a receiver, or otherwise for the protection, care, and management of the estate of such lunatic, and such receiver should have the same powers and authorities as a receiver of the estate of a lunatic found such by inquisition then had, and also to make orders for the application of the income of such lunatic, or a sufficient part thereof, for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such lunatic, and also as to the investment or other application for the purpose of accumulation of the overplus, if any, of such income, for the use of such lunatic, as to the Lord Chancellor should from time to time in each case seem fit: And whereas doubts have arisen whether the last-mentioned Act extends to authorise a receiver appointed as aforesaid to receive dividends on government or bank stock or annuities standing in the lunatic's name, and it is expedient that these doubts should be removed: Be it therefore enacted as follows:—

Every receiver of the estate of such lunatic as aforesaid, already appointed, or who may be hereafter appointed under the powers in the said last-recited Act, shall have full power to demand, and to receive and to give effectual receipts for, the dividends due or to become due of any stock belonging to the lunatic.

5. This Act shall be and is hereby declared to be a full and complete indemnity and discharge to the Governor and Company of the Bank of England, and all other companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto, and such acts and things shall not be questioned or impeached in any Court of Law or Equity to their prejudice or detriment.

6. The person or persons for the time being intrusted as aforesaid may, by order upon a petition, direct the receiver to make such repairs and improvements of or upon the land of the lunatic, or to make to the tenant executing the same such allowance in respect thereof by and out of the lunatic's income, and also to make and execute such contracts, agreements, leases, or under-leases of or concerning the same, as may seem expedient for the preservation or increase of the income; and every act done according to such direction as aforesaid shall be valid and binding to all intents and upon all persons whomsoever.

7. In the construction of those provisions of

this Act which refer to the secondly-mentioned Act, the words "land," "stock," and "dividends" respectively shall be interpreted as is provided for the like words in the first-mentioned Act.

## PATENT LAW AMENDMENT ACT, 1852.

### FIRST SET OF RULES AND REGULATIONS.

1st October, 1852.

UNDER the Act 15 & 16 Vict. c. 83, for the passing of Letters Patent for Inventions.

By the Right Honourable Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain; the Right Honourable Sir John Romilly, Master of the Rolls; Sir Frederic Thesiger, her Majesty's Attorney-General; and Sir Fitz Roy Kelly, her Majesty's Solicitor-General, being four of the Commissioners of Patents for Inventions under the said Act.

Whereas a commodious office is forthwith intended to be provided by the Crown as the Great Seal Patent Office, and the Commissioners of her Majesty's Treasury have, under the powers of the said Act, appointed such office as the office also for the purposes of the said Act.

All petitions for the grant of letters patent, and all declarations and provisional specifications, shall be left at the said Commissioner's office, and shall be respectively written upon sheets of paper of twelve inches in length by eight inches and a half in breadth, leaving a margin of one inch and a half on each side of each page, in order that they may be bound in the books to be kept in the said office.

Every provisional protection of an invention allowed by the law officer shall be forthwith advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner, the title of his invention, and the date of the application.

Every invention protected by reason of the deposit of a complete specification, shall be forthwith advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner, the title of the invention, the date of the application, and that a complete specification has been deposited.

Where a petitioner applying for letters patent after provisional protection, or after deposit of a complete specification, shall give notice in writing at the office of the Commissioners of his intention to proceed with his application for letters patent, the same shall forthwith be advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner, and the title of his invention; and that any persons having an interest in opposing such application are to be at liberty to leave particulars in writing of their objections to the said application at the office of the Commissioners within 21 days after the date of the Gazette in which such notice is issued.

The office shall be open to the public every day, Christmas Day and Good Friday excepted, from 10 to 4 o'clock.

The charge for office or other copies of documents in the office of the Commissioners shall be at the rate of two pence for every 90 words.

By the Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, and the Right Honourable Sir John Romilly, Master of the Rolls.

Ordered, that there shall be paid to the law officers and to their clerks the following fees :

By the person opposing a grant of letters patent :—

	£	s.	d.
To the law officer . . . . .	2	12	6
To his clerk . . . . .	0	12	6
To his clerk for summons . . . . .	0	5	0

By the petitioner on the hearing of the case of opposition :—

	£	s.	d.
To the law officer . . . . .	2	12	6
To his clerk . . . . .	0	12	6
To his clerk for summons . . . . .	0	5	0

By the petitioner for the hearing, previous to the fiat of the law officer allowing a disclaimer or memorandum of alteration in letters patent and specification :—

	£	s.	d.
To the law officer . . . . .	2	12	6
To his clerk . . . . .	0	12	6

By the person opposing the allowance of such disclaimer or memorandum of alteration, on the hearing of the case of opposition.

	£	s.	d.
To the law officer . . . . .	2	12	6
To his clerk . . . . .	0	12	6

By the petitioner for the fiat of the law officer allowing a disclaimer or memorandum of alteration in letters patent and specification :—

	£	s.	d.
To the law officer . . . . .	3	3	0
To his clerk . . . . .	0	12	6

Ordered by the Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain.

All specifications in pursuance of the conditions of letters patent, and all complete specifications accompanying petitions and declarations before grant of letters patent, shall be filed in the Great Seal Patent Office.

All such specifications shall be respectively written upon both sides of a sheet or sheets of parchment, each page being of the size of 18 inches in length, by 12 inches in breadth, leaving a margin of one inch and a half on each side of each page, in order that they may be bound in the books to be kept in the said office; but the drawings accompanying such specifications, if any, may be made upon larger

sheets of parchment than of the size of 18 inches by 12 inches, leaving a margin of one and a half inches, as aforesaid.

The charge for office or other copies of documents in the Great Seal Patent Office shall be at the rate of two pence for every 90 words.

#### NOTICE.

The Act directs, that in case reference is made to drawings in any specification deposited or filed under the Act, an extra copy of such drawings shall be left with such specification.

The petitioner or patentee is required to leave at the office, on filing his specification, four extra copies of the drawings, if any—one copy to be transmitted by the Commissioners with the office copy of the specification to the Enrolment Office in Dublin, one other to the Chancery Office in Edinburgh, as directed by the Act, and the third copy for the use of the Queen's printer. The petitioner or patentee will be repaid at the office, the reasonable charges made by his draftsman for the three extra copies hereby required.

Printed forms of the several notices required by the Act may be obtained at the Commissioners' office.

#### SECOND SET OF RULES AND REGULATIONS.

15th October, 1852.

UNDER the Act 15 & 16 Vict. c. 83, for the passing of Letters Patent for Inventions.

By the Right Hon. Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, the Right Hon. Sir John Romilly, Master of the Rolls, Sir Frederic Thesiger, her Majesty's Attorney-General, and Sir Fitz Roy Kelly, her Majesty's Solicitor-General, being four of the Commissioners of Patents for Inventions under the said Act.

The office of the Director of Chancery in Scotland, being the office appointed by the Act for the recording of transcripts of letters patent, shall be the office of the Commissioners in Edinburgh for the filing of copies of specifications, disclaimers, memoranda of alterations, provisional specifications, and certified duplicates of the register of proprietors.

All such transcripts, copies, and certified duplicates shall be bound in books, and properly indexed; and shall be open to the inspection of the public at the said office, every day from 10 to 3 o'clock.

The charge for office copies of such transcripts, copies, and certified duplicates, recorded and filed in the said office, shall be at the rate of 2d. for every 90 words.

The Enrolment Office of the Court of Chancery in Dublin, being the office appointed by the Act for the enrolment of transcripts of letters patent, shall be the office of the Commissioners in Dublin for the filing of copies of specifications, disclaimers, memoranda of al-

terations, provisional specifications, and certified duplicates of the register of proprietors.

All such transcripts, copies, and certified duplicates shall be bound in books, and properly indexed, and shall be open to the inspection of the public at the said Enrolment Office every day, Christmas Day and Good Friday excepted, from 10 to 3 o'clock.

The charge for office copies of such transcripts, copies, and certified duplicates, enrolled and filed as aforesaid, shall be at the rate of 2d. for every 90 words.

No warrant is to be granted for the sealing of any letters patent which contains two or more distinct substantive inventions.

A provision is to be inserted in all letters patent in respect whereof a provisional and not a complete specification shall be left on the application for the same, requiring the specification to be filed within six months from the date of the application.

No amendment or alteration, at the instance of the applicant, will be allowed in a provisional specification after the same has been recorded, except for the correction of clerical errors or of omissions made *per incuriam*.

The provisional specification must state distinctly and intelligibly the whole nature of the invention, so that the law officer may be apprized of the improvement, and of the means by which it is to be carried into effect.

The fee to be paid for every duplicate of such letters patent as may have been destroyed or lost shall be 1*l*.

Where the applicant desires his letters patent to extend to any of the colonies, he must specify in his petition for the same, the particular colony or colonies to which he desires it to extend; and when the applicant shall give notice of his intention to proceed with his application for letters patent, the law officer, to whom such application is referred, shall hear him or his agent upon such extension; and the said law officer shall make his report to the Lord Chancellor thereon. And no warrant for letters patent containing such extension shall be made unless the Lord Chancellor shall allow the same.

Ordered by the Right Hon. Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain.

Every application to the Lord Chancellor against or in relation to the sealing of letters patent shall be by notice, and such notice shall be left at the Commissioners' Office, and shall contain particulars in writing of the objections to the sealing of such letters patent.

## THE PRESENT DEFECTIVE SYSTEM OF LEGISLATION.

### MR. WILLMORE'S PROPOSED REMEDIES.

AN able pamphlet has just been published, called "Confusion Worse Confounded; or, the Statutes at Large in

1852," by Graham Willmore, Esq., Q. C., in which the learned author, after setting forth in a very striking manner the evils of our present method of law-making, suggests appropriate remedies, as well for past defects, as for the preparation of future statutes.

Mr. Willmore's plan of reform is thus stated:—

"It consists in the creation of a Board of three Commissioners, who shall not be members of either House of Parliament: their duties to be divided into two distinct branches, one relating to future, the other to past legislation. As to the first, a copy of every bill relating to public matters, which shall have passed the first reading in either House of Parliament, shall be forthwith laid before the Board; and it shall be their duty, before the expiration of one month after such copy shall have been laid before them, unless longer time be allowed by leave of the House in which the bill was introduced, to prepare a report upon the bill, stating their opinion as to the purport and probable effect of it, *so far as that opinion can be formed from the fair construction of its words*. In this report especial regard shall be had to existing legislation upon the subject; and the Board shall wholly abstain from any reference to objects or motives which may be supposed to have operated in bringing forward the bill. The Board shall also suggest such alterations, additions, or omissions in the bill as to them may seem to render it more effective for the attainment of its ostensible purpose; and, if they think it expedient, may propose an entirely new draft of the bill. The report, together with a statement of the suggestions, and a copy of the new draft, if any, to be laid on the table of the House when the bill comes on for a second reading. The promoter of the bill to have the option of adopting the suggestions and draft, either, or any of them, if he shall think fit. After the bill shall have received the approval of both Houses, previous to its becoming law, it shall be again subjected to the inspection of the Board, lest any inaccuracies of language should have crept in during its progress through Parliament. In case of any emergency requiring the immediate application of an Act of Parliament, the Crown to have the power of dispensing with the intervention of the Board.

"With regard to past legislation, the Board shall employ the whole of their time, not occupied with future legislation, in preparing bills for the repeal and consolidation of all the existing Statute Law, neither adding nor altering anything. (such being properly the province of the Legislature itself). Except in cases where some subject may require immediate attention, the Board shall employ themselves upon the Statutes of the earliest reign in which there are any extant. And taking each Statute in succession, shall pursue through all the subsequent reigns up to the present time, the thread

of legislation upon the subject of that Statute; embodying in one bill all the existing Statute Law upon such subject. The bill at full length, and also the titles of all the Acts proposed to be repealed, shall be published in the 'Gazette' at least six months previous to its introduction into the Legislature. By this course abundant time will be afforded for the deliberation and criticism both of individuals and societies throughout the nation. And the Legislature itself may afterwards adopt any improvements either in substance or style which may be thereby elicited. The bill to be brought before the Legislature by the ministry for the time being. I further propose that when, during the progress of the work, all the known Statutes of any preceding reign shall have become wholly consolidated and re-enacted or repealed, there shall be a declaration of Parliament, which shall receive the assent of the Crown, that no Statute passed in such reign shall have any further force or effect whatever. So that by degrees, and as I hope, at no unreasonably distant date, the whole of our now existing Statute Law may either be consolidated and re-enacted in a compact, connected, intelligible form, or else wholly repealed, swept away, abolished, and put out of sight."

We very cordially concur in these suggestions, and hope they will be taken into consideration in the proper quarters. It is manifest that the recent alterations in our system of jurisprudence have been carried too far to stop. More must be done. It may be doubtful whether many of the changes that have been made are really beneficial, but we cannot go back: we must now perfect with skill what has been commenced by rashness.

#### NOTICES OF NEW BOOKS.

*The Common Law Procedure Act (15 & 16 Vict. c. 76), with Practical Notes, illustrated by Precedents of Pleadings and Forms of Affidavits, Notices, &c., framed under the Statute, with an Introduction, explanatory of the Changes effected in the Practice of the Superior Courts, and containing an Elementary View of the Proceedings in Personal Actions and in Ejectment.* By ROBERT MALCOLM KERR, Barrister-at-Law. London: Crockford. 1852. Pp. 276.

IN the introductory chapters to this work, occupying 132 pages, Mr. Kerr gives, 1st, a Summary of the Changes effected by the Common Law Procedure Act; 2nd, an elementary view of an Action at Law under the New Procedure; and 3rd, an Outline of the Action of Ejectment as it was and as it is. This review of the scope and effect of

the Act is very ably written, and will be found of much assistance to the practitioner in carrying the various provisions of the Act into effect.

Mr. Kerr then proceeds to give the Act verbatim, with full and explanatory Notes on the several sections, accompanied by the requisite forms of proceeding. The Author's design is thus stated in his preface:—

"In laying this volume before the Legal Profession, the Editor deems it necessary to state that it makes no pretension to the character of a 'New Practice' of the Superior Courts. His sole wish and object has been, by explanatory notes upon the different sections of the Statute, and by giving the necessary forms of proceedings, to meet the more immediate wants of the practitioner. It is obvious that, before any book of practice can be prepared, new Rules of Court must have been issued, and those rules and also various sections of the Act must have received an interpretation by the Judges.

"All criticism on the Statute has been avoided, except in those cases in which it was absolutely necessary. Any expression of opinion either on the Statute itself, considered as a merely remedial measure, or on what a reform in the procedure in the Superior Courts might have been, would obviously be of no value whatever to the practising lawyer, for whom this volume is exclusively intended."

He further adds, that—

"It has not been considered useful to make any observations on those parts of the Statute which simply abolish existing proceedings. Special traverses and express colour will belong henceforth to the legal antiquary. Some portions of the Act, again, could not properly form the subject of commentary,—those sections, for instance, which create new proceedings altogether; and other sections relate exclusively to proceedings in which the practising lawyer is little interested,—the new jury process, for example. The subject of 'Costs' has been scarcely affected by any new enactment, and the proceedings at the trial are left untouched by the Statute.

"In the selection of forms, the Editor has been influenced by a desire to insert those only which seemed likely to be useful in practice.

"On that part of the Statute which relates to Pleading, the Editor has made but few observations. A work by a gentleman thoroughly qualified to elucidate the new system, has been announced in connection with this volume. But even had this not been the case, the subject did not properly come within the compass of the present treatise. The old 'Science' of Pleading has been demolished. Whether from the ruins a new structure will be raised, or whether these ruins will by-and-by be treated as rubbish, and removed altogether, it is impossible to say. Competitions in law, as in everything else, has given an impetus to im-

provement, which may end either in uniting the administration of Law and Equity in one set of Courts, by one simple and intelligible procedure, or in farther extending the jurisdiction of the County Courts, until these tribunals come to decide, in the first instance, on all legal and equitable rights whatever, and the Superior Courts become merely Courts of Appeal. The Common Law Procedure Act can be looked upon only as the first of a series of measures for the Amendment of the Process, Pleading, and Practice of the Superior Court."

We cannot concur with the Author in supposing it possible that the Superior Courts will ever become "merely Courts of Appeal." On the contrary, we think that the County Courts will be practically confined to the adjudication of "small debts," according to the Act by which they were constituted, and that the Superior Courts, under the amended course of proceeding, will be, at no distant time, generally preferred by the public at large.

## THE BAR AND THEIR CLIENTS.

### RESPONSIBILITY.—CONTROL OF FEES.

We consider it to be our duty to extract from the columns of *The Times* of the 3rd November, and to engraft on our pages, the following letter from a BARRISTER of thirty years' standing :—

"SIR,—Naturally enough, the letters addressed to you by barristers are, in fact, confined to their own interests. Allow me to call your attention to the adverse interests of their clients.

"Under the rule which requires an attorney to intervene between the client and the barrister, the client has an advantage which, in many cases, has not been of slight importance to him. The fee to the barrister, being in the first place marked and paid by the attorney, being next subjected to the consideration of the Taxing Master, and being then recoverable only to the extent which secures that Master's approval, is, in effect, taxed before it is marked. The interest of the attorney is enlisted in favour of a low fee to the barrister, and the client is proportionately the gainer.

"Lord Denman has laid it down that rules will not restrain men of a dishonourable character. With the greatest submission to him, this is a very unexpected *dictum* of our revered Chief Justice, especially to those who are not unaware that in his own long career he was not

altogether inexperienced in giving effect to some of those rules by which the Bar is regulated.

"But whether or not that *dictum* is to be taken as more than *obiter*, no one will doubt that the abrogation of a rule or a practice which has the effect of putting a check on the covetousness of an unscrupulous barrister would give him new opportunities of gratifying his greed of gain; and, therefore, that the interests of clients demand that a new protection to them in respect of fees shall be substituted for that which is to be taken away.

"Again, if an attorney be guilty of gross negligence in the conduct of his client's case, the client may be recompensed by damages in an action against the attorney. I have heard that the yearly amount paid by attorneys to avoid the publicity which would be given to their negligence by their appearing as defendants is very large. But barristers, under the existing state of things, are not exposed to such actions. If, then, the remedy of the client for loss by the negligence of his present legal adviser be taken away, he ought to have a substitute for it by an action against the barrister.

"Perhaps it may be found that legislation on this point is needless, and that where the client employs the barrister without the intervention of an attorney he does not lose his right of action, but only has another defendant to sue.

"Should legislation on the matter be requisite, it appears to me that the character and incidents of a *mercenarium* must be made to attach to the fee paid directly by the client to the barrister; that authority over the barristers who dispense with the intervention of attorneys must be given to the Taxing Masters; and that those barristers must be made liable to damages for negligence in actions by their clients.

"If something like this be not done, the fancied boon to clients of abolishing the existing etiquette will prove to be a boon to no one but the very Junior Bar.

"At the same time, it would be a great injustice to those barristers who wish to maintain the honorary character of their services and their fees to degrade them to that mercenary position; and therefore I would suggest the expediency of their being two distinct Bars,—the one, that which has hitherto existed, with its old etiquette and privileges; the other a

new Bar, with the privilege of audience in all Courts, and liability to taxation and actions.

"It is clear enough to many that some such change is demanded, and it is equally clear to me that the change now so vehemently called for is not demanded with a single eye to the interests of the client, or with any view to the interests of those barristers who have surmounted the first difficulties of getting into practice. My impression is that the extraordinary increase of barristers within the last 20 years, from about 1,000 to above 3,000, is at the bottom of all this present stir. The benchers are greatly to blame for the present state of things. The time of studentship before the call to the Bar has been lessened from five years to three; the inducements to remain a fair time in the condition of a student have thus been lessened; and the consequence is that the Courts are crowded by barrister-chicks with the shell on their heads, full-fledged only as regards their wigs and gowns. We consequently hear much of the over-stocked state of the Bar; but the Bar is, in fact, very much under-stocked with men who are really competent for anything above mere routine practice.

On the other hand, the attorneys, whose numbers increase but slowly, if at all, are not only treading on the heels of, but are (as the County Court practice shows) treading down the very Junior Bar. It is the frequent remark of old practitioners, both at the Bar and among attorneys, that within the last 20 years the standard of the Bar as a body has been sadly depreciated, while that of the attorneys as a body has as happily been raised; and one proof of this is, that in many of the County Courts, the attorney-advocates are more than a match for the young barristers who frequent those tribunals. A return from the County Court Judges would curiously illustrate this position.

"The plain, hard, unpleasant truth is, that of the men who are now called to the Bar a sadly large majority have had a most imperfect legal education; that not a few of them are without any legal education whatever; that some of them, if they can construe, cannot parse the Latin that is to be found in the law books; and that there are existing instances of barristers whose spelling and grammar are often at variance with those of the majority of their brethren.

"I am not thus 'fouling my own nest,' for the legal nest in which I was hatched was not

so ill-tenanted. Thirty years' experience of the Profession make me regret that our benchers have too much forgotten the days of their youth.

(Signed)

"A BARRISTER."

## COMPARISON OF THE SUPERIOR AND INFERIOR COURTS.

### CONCURRENT JURISDICTION.

THE main objections to the County Courts are,—1st, That the suitors are obliged, for the most part, to attend the Court personally,—to be absent from, and consequently, more or less, to neglect their affairs at home,—leaving their shops, warehouses, or counting-houses to the care of others,—and no allowance being made for their loss of time.

2nd, That their little debts are paid in dribbles, and they have the trouble of attending the Court many times to receive the instalments. Why should not the creditor be left to arrange the time of payment with his debtor? It is his interest to allow reasonable time. Why should his money be paid to the Court and poundage deducted?

These impediments occasion the abandonment of thousands of small debts.

In the Superior Courts, instead of bailiffs and other officers, the attorney transacts the whole business for his client: issues the writ, serves it, arranges the times of payment, receives the instalments, and his client has no trouble whatever.

There should be concurrent jurisdiction down to 5*l.*, and writs of trial should not be limited to sums not exceeding 20*l.*, but extended to 50*l.*

If it be not altogether a delusion that the County Courts are highly satisfactory and eminently popular, they have nothing to fear;—but, at all events, give the creditor the right of suing his debtors in the old as well as the new Courts. Time will show the real value of the alterations which have been effected.

### PRACTICE AT THE EQUITY JUDGES' CHAMBERS.

THE Master of the Rolls directs that all papers brought into his Chambers shall be copied on foolscap paper, bookwise, with a guard margin (not less than three-quarters of an inch).

GEO. WHITING, *Chief Clerk.*

## PRACTICE AS TO STAMPS IN CHANCERY.

WE understand that at the Chancery Registrar's Office, the following regulations will be adopted :—

*As to New Orders.*

The amount of the stamp will be marked on the minutes by the registrar's clerk.

The stationer of the office will supply the stamp when the order is copied, and will return the papers to the registrar's seat, but retain the order.

A solicitor bespeaking an order will be required to procure a voucher from the stamp distributor that a stamp on which the order is to be written has been paid for.

*As to Orders of Course.*

Where printed forms are used, the registrar's clerk at the order of course seat, will tell the solicitor what form is required, and the solicitor will obtain the stamped form from the stationer of the office, and leave it with his papers at the order of course seat.

*As to Office Copies of Decrees and Orders.*

The stamps will be paid for to the stationer of the office on bespeaking the copy.

*As to Orders dated prior to Michaelmas Term, 1852.*

The stationer of the office will get stamps affixed on orders requiring the same, which shall have been marked with the proper amount of stamp by the registrar, thus (stamp 2*l.*), and left with the stationer with the money.

## LIVERPOOL LAW SOCIETY.

## ANNUAL REPORT OF THE COMMITTEE,

*For the year ending 1st November, 1852.*

THE Committee have again this year the satisfaction of referring to a large addition to the members of the Society, eleven gentlemen having been admitted, while two only, namely, Mr. Mallaby and Mr. Myers have retired.

The new members are Mr. Henry Fisher, Mr. Thomas Etty, Mr. William Tyndall, Mr. David Evans, Mr. Hugh Almond, Mr. James Blenkinsopp, Mr. John Neal, Mr. Timpron Martin, Mr. Edward Searle, Mr. R. A. Parker, and Mr. Lawrence Peel.

The Committee think they may now safely refer with satisfaction to the new rule regulating the admission of members, as since the date of the commencement of its operation in September, 1851, the members of the Society have been increased by no less than 23.

The past year has been one of almost unparalleled importance in matters relating to reforms and sweeping changes in the Law and Practice of the Courts. "The Masters in Chancery Abolition Act," "The Improvement of the Jurisdiction of Equity Act," "The Suits in Chancery Relief Act," "The Enfranchisement of Copyholds Act," "The Wills

Amendment Act, 1852," "The Act for extending the Trustee Act, 1850," "The Act to facilitate Proceedings in the County Court," "The Common Law Procedure Act," and "The Act for payment of Officers at Nisi Prius by Salaries in lieu of Fees," are all measures which will require the anxious and careful study of the Profession, and it is hoped and trusted that their effect will be to abolish many of the justly complained of abuses in practice, and thus tend to the mutual advantage of the professional practitioner and the client.

All these varied Acts claimed and received the unremitting attention of the Committee while passing through their various stages in both Houses of Parliament, and by the appointment of active sub-committees to watch and report upon each particular Bill, and take such steps by petition, and otherwise, as was thought expedient, they have reason to believe that their exertions have not been thrown away; but have tended, in several instances, to amend objectionable provisions, and add to the usefulness of the Acts as passed.

The Committee think it right to call the attention of the Society to a Bill introduced during the last Session into the House of Lords by Lord Brougham, which had for its object the transfer of the jurisdiction of the Courts of Bankruptcy to the County Courts. This change it is considered would be highly injudicious, as in almost all instances, independently of the Judges of the County Courts having already sufficient employment in their Courts as now constituted, the Judges are not familiar with the practice in bankruptcy, and the machinery of the Courts is not adapted to the working and healthy management of important bankruptcy matters. The Committee thus advert to this bill, as, though withdrawn in the last Session, it is by no means an unlikely thing that it may be re-introduced in the next.

In consequence of the receipt of a circular letter from the Secretary of the Treasury announcing the appointment by the Lord Chancellor of five County Court Judges to frame a scale of costs and charges to be paid to attorneys in the County Courts, and requesting that this Society would communicate to him any suggestions they might wish to make upon such scale, the Committee, after mature deliberation and discussion, prepared such a scale as they thought should be allowed, both as between attorney and client, and as between party and party. A copy of this scale was forwarded to the Secretary of the Treasury, and also to several Law Societies in the kingdom. Subsequently, however, the Judges having intimated their willingness to receive a deputation from the various provincial Law Societies, and to confer with them on the subject, the Committee appointed one of the body (Mr. Payne) to represent the Liverpool Law Society in such conference in London. Deputations also attended from the Law Societies of Manchester, Newcastle-on-Tyne, York, Sheffield, and Bristol. The members of the different



Societies held two long preliminary meetings, (aided by Mr. *Shaen* of the *Metropolitan and Provincial Law Association*), previous to their waiting upon the Judges, and unanimously agreed upon a scale of costs, in lieu of the various scales which had been transmitted to the Secretary of the Treasury by each individual Law Society. On the 20th October, the appointed interview with the Judges took place, and from the report of such interview made by Mr. *Payne*, the Committee think the result highly satisfactory, the whole of the proposed scale of costs and charges having been read over by the Judges, was fully discussed, and reasons were given for the amount of costs proposed, and the Judges appeared much pleased with the meeting, and the information they elicited by inquiries from the deputations on various points connected with the practice of the County Courts.

The subject of the Repeal of the Certificate Duty has not this year been lost sight of. A petition very numerously signed was presented to the House of Commons by Sir *T. B. Birch*, and a deputation from this Society waited upon the new members for the borough to lay before them the claims of the Profession to be relieved from this unjust tax, and the Committee believe that the arguments used on that occasion will not be without good effect.

The Metropolitan and Provincial Law Association having announced a Special Meeting of that Association and of the Profession generally, to be held at Derby on the 13th October, "To take into consideration the present and future prospects of the Profession, with reference especially to recent and contemplated changes in the law, and the steps which ought to be taken in the ensuing Session of Parliament," the Committee considered that the vast importance of the subject made it imperative upon the Society to be represented at such meeting, and accordingly Mr. *Avison*, one of their body, proceeded to Derby. The meeting was

attended by the Chairman and several members of the Committee of the Metropolitan and Provincial Law Association, and by deputations from various provincial Law Societies, and it was unanimously resolved, that "in order to maintain the true position of the Profession, both as respects the Public and the members of the Bar, it was desirable that the practising attorneys and solicitors of England and Wales should be united in association."

The Committee beg to impress upon their professional brethren the urgent necessity of uniting those elements of strength, which in union they would undoubtedly possess, in protecting their own rights from encroachments, as they are convinced by so doing that they are not only thereby protecting themselves, but their clients and the Public, who undoubtedly are very materially interested in any Acts which will insure the honesty and respectability of men, in whom they have at some period or other to place implicit confidence. For several years past, the Profession of Attorneys and Solicitors, as a body, has become, either from apathy or want of unanimity, or both, one of the weakest bodies in the country. The time has now arrived when this state of things should no longer continue, and the Metropolitan and Provincial Law Association having been formed, the Committee beg to urge most strenuously and firmly that it is the duty of every professional man, who has the interest of his Profession at heart, to join in supporting an Association whose sole object is "to assist all well-considered plans for improving the law, especially as relating to the practice of the Courts, and to maintain an honourable position and character for the Profession."

The accounts of the Treasurer show a balance of 46*l.* 7*s.* 4*d.* to the credit of the Society.

The members of the Committee who go out of office by rotation are Mr. *Payne*, Mr. *Avison*, Mr. *Falcon*, Mr. *Fisher*, and Mr. *Wright*.

## ADMISSION OF ATTORNEYS.

*Notices for Michaelmas Term, 1852.*

ADDED TO THE LIST PURSUANT TO JUDGE'S ORDER.

### Queen's Bench.

#### Clerks' Names and Residences.

#### To whom Articled, Assigned, &c.

Brown, Lancelot Charles, 4, Halkin Street, Belgrave Square	James Leman, Lincoln's Inn Fields.
Goodwin, Thomas, Wateringbury; and Gloucester Place, Cowley Road, North Brixton	John Monckton, Maidstone.
Hayman Philip Charles, 30, Old Bond Street; 4, Gray's Inn Square	H. C. Trenchard, Taunton; H. S. Westmacott, John Street.
Palmer, Robert, jun., 37, Maddox Street; and Stokesley	G. Grenside, Stokesley; R. Palmer, Stokesley.
Smale, Arthur William, 21, Lincoln's Inn Fields	Charles Smale, Bideford.
Stone, William Way, 16, Great Ormond Street	Joseph Rose, Aylesbury; Richard Rose, Aylesbury.
Weekes, Charles Henry, 4, High Street, Bloomsbury; and Lamerton by Tavistock	George W. Snell, Callington; John V. Bridgman, Tavistock.

## GRIEVANCES IN THE COUNTY COURT.

## INSOLVENCY CASES.

*To the Editor of the Legal Observer.*

SIR,—I do not know whether your attention has yet been drawn to a growing and most injurious evil that has sprung up, arising in part from the new powers vested in the hands of the County Court Judges. I allude to the power these Judges now possess of hearing insolvency cases. Three cases have lately come under my own knowledge, and I think it as well to communicate them, in the hope that it may stop so great an injustice spreading. Two of the cases I refer to occurred at Dover early in the last month. The insolvents were, and had been, wholly resident in and near London for years before;—their occupation and employment was in London;—their debts incurred in London;—embarrassments ensued, one upon the other, which caused their flight to Boulogne. They came over to Dover and were arrested. The next day they filed their petition and schedule,—immediately got out on bail procured in the town of Dover, and came up in the course of three weeks for their discharge. These facts, as far as I have stated them, appear in the report of their cases as published in the local paper for the county.<sup>1</sup>

Now, I need hardly remind you of the great injustice that compelled several London creditors to go to the expense of taking down counsel and attorneys to oppose the discharge of the insolvents, besides the expense of the creditors' personal attendance at a place so far distant. This seems to be quite a new step in behalf of insolvents, and really calls for some notice from those whose duty it is to adjudicate in such cases.

The other case I allude to, is that of a gentleman whose residence has for many years been in London, but who quietly availing himself of the Vacation, went to the neighbourhood of Exeter, was there taken in execution, and obtained his discharge from the Judge of the County Court. E.C.

## TAKING OUT AND RENEWAL OF CERTIFICATES.

## APPLICATIONS TO A JUDGE AT CHAMBERS.

*On 26th November, 1852.*

*Queen's Bench.*

Babington, E., jun., 37, Store Street, Bedford Square; and Alfred Place, Ditto.

Barrow, Joseph, Prescott, Lancaster.

Bartley, N., 26, Wellington Street, Victoria Park; 2, Providence Street, Ditto.

Bell, Richard, 3, Park Place, Loughborough Road, Brixton.

Blake, Frederick John, 3, Grove Place, Camberwell, Surrey.

Boorman, W., Jubilee Place, King's Road, Chelsea; and Kingston, Surrey.

Brodrick, George, Carshalton, Surrey.

Brown, Thomas, 30, Chad's Row, King's Cross.

Bunting, W., 8, Percy Circus, Pentonville; and Chesterfield, Derby.

Burd, Jonathan, Wem, Salop.

Cartwright, Thomas B., 33, Upper Charlotte Street, Fitzroy Square.

Chester, Frederick James, 8, South Place, Kennington Common.

Chippindall, William, 470, Oxford Street.

Clark, William, Wolverhampton, Stafford.

Cook, Robert, Bridgwater, Somerset.

Cotton, Edward, Welford, Northampton.

Crossman, William, 35, Charrington Street, Somers Town.

Davies, Robert, Warrington, Lancaster.

Dickin, Francis, Stanley, Stafford.

Digby, George Edwd., Forest Row, Dalston;

Albert Road, Peckham; and Maldon, Essex.

Dixon, George, Rutland Street, Hampstead Road.

Fisher, Edward, jun., Ashby-de-la-Zouch, Leicester; and 16, Compton St., East, Brunswick Square.

Fisher, Joseph Timbrell, 15, College Villas, Camden Town; and 9, Mornington Crescent, Camden Town.

Grange, R., 20, Paddington Street; and 3, Victoria Terrace, St. John's Wood.

Hall, H. W., 76, Castle Street, Leicester Sq.; and Whitecross Street Prison.

Hare, Isaac Corney, Monkwearmouth Shore, Durham.

Hargreaves, Thomas, Neath, Glamorgan.

Hart, William Henry, 1, Albert Terrace, New Cross, Deptford.

Hill, John Allen, Almondsbury, Gloucester.

Ings, Thomas Godden, 4, Buckingham St., Caledonian Road.

Jessel, Edward, Savile Row, Westminster.

Johnson, John Fortin, 6, Portsmouth St., Lincoln's Inn Fields.

Jordan, John, Albert Terrace, Kennington Park Road.

Kendall, John, 20, Spring Street, Sussex Gardens; and Park Place Villas, Maida Hill, West.

Lucas, Robert de Neufville, Langhorne, Carmarthen.

Mason, Charles, Fenton, Stafford.

Morgan, John, 3, Edith Grove, New Brompton, Middlesex.

Munday, Richd. Hodges, 5, Fountain Court, Strand; and 94, Dorset Street, Fleet Street.

Newman, Robert Rutland, 14, Heathcote Street, Middlesex.

Nunn, John, Manchester.

Olive, Joseph, 4, Twyford Buildings, Lincoln's Inn Fields.

Pattinson, Thomas, Rock Ferry, Chester.

Pollard, William Darley, 17, Upper Brooke Street, Manchester; and Salford, near Manchester.

Pulsford, William, 39, Nicholas Lane, Lombard Street; and 10, Old Jewry Chambers.

Redward Benjamin, Portsea, Hants.

Ridley, Henry Adolphus, 47, Prospect Pl., St. George's Road, Southwark.

<sup>1</sup> *The Dover Chronicle*, Oct. 16, 1852.

Rowcliffe, Edward Lee, 34, Bernard Street, Russell Square; and 1, Bedford Row.  
 Rowlinson, John Howell, Birmingham.  
 Saben, Henry, Stone, Stafford.  
 Sharp, Percy M., of Broadlands, Clapham.  
 Sheffield, William, Mare Street, Hackney.  
 Silver, John, 10, Great Ormond Street, Middlesex.  
 Smith, W. Ackers, 90, Denbigh Street, Belgrave Road, Pimlico.  
 Strong, Charles Blundell, Tiverton, Devon.  
 Swan, Charles Septimus, Morpeth, Northumberland; and Norwich.  
 Tomlin, John, Kendal, Westmoreland.  
 Vyner, Charles James, Nantwich, Chester.  
 Walker, Edward, Ely, Cambridge.  
 Watson, Thomas Cripps, York.  
 Wetherell, Chas., 28, Gilesgate, Durham; and Hexham, Northumberland.  
 Wilson, Robert, 102, Lower Thames Street.  
 Wood, William, 14, Sussex St., New Road.

*On the last day of Michaelmas Term, 1852.*

Bedwell, Francis, of Bath.  
 Corles, Thomas, 42, Holywell Street, Strand; Acton Street; and Jewin Street.  
 Fryzer, Samuel, of Tewkesbury.  
 Lowe, Richard, of Sleaford.  
 Shields, John, Ripon and Grenelthorpe, Yorkshire.  
 Smith, Edmund, of Wavertree, near Liverpool.  
 Warren, Henry, of 31, High Street, Pimlico.

## EXAMINATION AND LECTURES OF MICHAELMAS TERM.

THE examination of Candidates for admission on the Roll of Attorneys, which had been appointed for Thursday, the 18th instant, has been postponed till *Friday*, the 19th, on account of the Public Funeral of the Great Duke.

The Lecture on Common Law, which was fixed for Friday, the 19th, must unavoidably be postponed.

## REPEAL OF ATTORNEYS' CERTIFICATE DUTY.

THE measures for bringing before Parliament the subject of the Repeal of the Certificate Duty have already been commenced by the Incorporated Law Society. It is expected that a Deputation will shortly attend the Chancellor of the Exchequer to ascertain his views.

## NOTES OF THE WEEK.

### MASTERS EXTRAORDINARY IN CHANCERY.

THE Lord Chancellor will not appoint any person a Master Extraordinary without its appearing that an additional Master is required for the district, and he will expect the application to be signed by some of the public functionaries of the district in which the applicant proposes to act.

### COMMON PLEAS.

This Court will sit on the 17th and 19th instant to hear appeals from the Registration and the County Courts.

### EXCHEQUER OF PLEAS.

The appeals from the County Courts will in future be set down in the Special Paper.

### LAW APPOINTMENT.

The Queen has been pleased to grant the place of one of the Lords of Session in Scotland to John Marshall, Esq., Dean of the Faculty of Advocates in Scotland, in the room of John Hay Forbes, Esq., resigned.—From the *London Gazette* of 5th Nov.

### NEW COUNTY COURT TREASURER.

Mr. James Disraeli has been appointed Treasurer of the County Courts of Nottinghamshire, Lincolnshire, and Derbyshire, Circuits 17, 18, and 19.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

Nov. 2, 3.—*Bostock v. Sidebottom*—Appeal from Vice-Chancellor Bruce dismissed with costs.

— 3.—*In re Ipswich and Bath Charities*—Stand over.

— 3.—*Kekewich v. Marker*—Stand over.

— 6.—*In re Crosthwaite*—Stand over.

— 6, 8.—*Hawkes v. Eastern Counties Railway Company*—Cur. ad. vult.

Nov. 9.—*Harrison v. Round*—Part heard.

### Lords Justices.

*Plowden v. Hyde*. July 28; Aug. 4, 1852.

WILL. — REVOCATION OF BY RE-CONVEYANCE OF ESTATE TO USES TO BAR DOWER.

*A testator mortgaged in fee certain estates which stood limited to the common uses to bar dower and afterwards devised the same*

by will in 1811. The estates were subsequently re-conveyed to the same uses to bar dower upon the mortgage being paid off: Held, reversing the decision of Vice-Chancellor Kindersley, that the re-conveyance did not operate as a revocation of the will.

THIS was an appeal from the decision of Vice-Chancellor Kindersley (reported 2 Simons, N. S. 171). It appeared that in April, 1811, the testator, Mr. Henry C. Plowden, mortgaged certain estates, which stood limited to the common uses to bar dower, to Mr. William Newton in fee, subject to a proviso that if the testator, his heirs, appointees, executors, administrators, or assigns should pay the sum advanced with interest, the estate should be re-conveyed to him, his heirs, appointees, or assigns, or to such other person or persons, to such uses and in such manner as he or they should direct. The testator, by his will, dated in May, 1811, devised all and every his messuages, lands, tenements, and all other his real estate whatsoever, or which he had contracted to purchase, of or to which he or any person or persons in trust for him, was, or were seised or entitled for any estate of freehold and inheritance, or of freehold only, in possession, reversion, remainder, or expectancy, or which he had power to dispose of or appoint by his will, with their rights, members, and appurtenances. The mortgage was paid off in December, 1813, and the testator took a re-conveyance of the estate to the usual uses to bar dower. The Vice-Chancellor having held, that the will was revoked as to these estates by the re-conveyance, this appeal was presented.

*Willcock and Jessel* in support; *J. Russell and Lewin*, contra; *Glaspe* for other parties.

The Lords Justices said, that as the property stood limited to the ordinary uses to bar dower, by which the testator had absolute control over it, and had been re-conveyed to the same uses, the will was not revoked thereby, and the decision of the Court below must be reversed.

*In re Wyld.* Nov. 5, 1852.

WILL.—CONSTRUCTION.—GIFT TO HUSBAND AND WIFE.

*A testator gave a sum of money after a life estate, to J. C., and Catherine his wife, and W. L., their executors, administrators, and assigns, in equal shares and proportions: Held, that the fund was divisible into moieties—one of which went to the husband and wife, and the other to W. L.*

THE testator, William Wyld, by his will, dated in March, 1788, gave *inter alia* a sum of 700*l.* to trustees, upon trust to pay the interest thereon to his wife for life, and after her death, unto and amongst John Collins and Catherine his wife, and William Lee, their executors, administrators, and assigns, in equal shares and proportions.

*W. W. Cooper* and *G. W. Collins* contended the fund was divisible into thirds; *Follett* and

*Kinglake*, that it was divisible into moieties; *Hallett* for the trustees.

The Lords Justices said, that a gift to a husband and wife was a gift to them as one person, where a contrary intention could not be gathered from the instrument of gift, and that the fund was therefore divisible into moieties, of which one was to go to the husband and wife, and the other to Mr. Lee.

*In re Copeland, ex parte Copeland.* Nov. 6, 8, 1852.

BANKRUPT LAW CONSOLIDATION ACT.—LOSS ON CONTRACT RELATING TO RAILWAY STOCK.—REFUSAL OF CERTIFICATE.

*A bankrupt had lost 210*l.* within a year, upon a contract relating to the purchase of railway shares declared by a resolution of the company to be converted into stock. The contract was continued by successive agreements, and the loss included commission: Held, discharging with costs a petition of appeal from Mr. Commissioner Stevenson, that the bankrupt was not entitled to his certificate under sect. 201 of the 12 & 13 Vict. c. 106.*

THIS was an appeal from Mr. Commissioner Stevenson, refusing this bankrupt his certificate under sect. 201 of the 12 & 13 Vict. c. 106. It appeared that the bankrupt had contracted in February, 1850, to purchase 60 shares in the Manchester, Sheffield, and Lincolnshire Railway Company, and that he had ultimately lost 210*l.* on the transaction, including commission.

*J. Russell and Martindale* in support; *Bacon and Selwyn*, for the assignees, contra.

The Lords Justices said, the commission must be included in the gross amount of loss, and the objection that the contract was carried over by successive continuations must be overruled, as by the interpretation clause, the word contract would include contracts. Then as to the question, whether this was stock within the Act, it appeared the shares had been converted into "stock" by a resolution of the company, where, as was the case here, 100*l.* had been paid. But even were this not so, it would be within the earlier provision of the section against wagering and gaming,<sup>1</sup> and the prin-

<sup>1</sup> Which enacts, that "no bankrupt shall be entitled to a certificate of conformity under this Act, and any such certificate, if allowed, shall be void, if such bankrupt shall have lost by any sort of gaming or wagering in one day 20*l.*, or within one year next preceding the issuing of the fiat or filing of the petition for adjudication of bankruptcy 200*l.*, or if he shall within one year next preceding the issuing of the fiat or the filing of such petition, have lost 200*l.* by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract."

ciple of construing Acts of Parliament to suppress the mischief and advance the remedy, was also sufficient to bring the contract within the Act. The appeal was therefore dismissed, with costs.

Nov. 2.—*Corporation of Liverpool v. Chorley Waterworks Company*—Stand over.

— 3, 4.—*Maxwell v. Maxwell*—Appeal from Master of the Rolls dismissed with costs.

— 4.—*Esparte Barlow, in re Marygold*—Appeal from Mr. Commissioner Daniell dismissed with costs.

— 5.—*In re Newman*—Reference to Master in lunacy.

— 6.—*In re Flintoff*—Stand over.

— 6.—*Esparte Ashcroft, in re Ashcroft*—*Cur. ad. vult.*

— 8, 9.—*Lord Ward v. Oxford, Worcester, and Wolverhampton Railway Company*—On appeal from Master of the Rolls, decree for specific performance of contract.

### Master of the Rolls.

Nov. 2.—*Wiggins v. Blake*—Order for payment of moneys into Court.

— 3.—*Brown v. Gordon*—Bill dismissed with costs.

— 3.—*In re Greenhill's Trusts*—Judgment on petition as to priority of incumbrances.

— 3.—*Plenty v. West*—Judgment on further directions.

— 3.—*Bridge v. Bridge*—Bill dismissed.

— 3.—*In re Derbyshire, Staffordshire, and Worcestershire Railway Company, ex parte Bainbrigg*—Reference to the Master.

— 5.—*Anderson v. Kemshead*—Bill dismissed.

— 5.—*Trustees of Birkenhead Docks v. Maw*—Interim order for injunction.

— 6.—*Crouch v. Hooper*—Exceptions to Master's report overruled.

— 6, 8.—*Stansfield v. Hobson*—*Cur. ad. vult.*

— 8.—*In re London Dock Company and others*—Exceptions allowed to Master's report.

— 8.—*Fogliosi v. Martin and another*—*Cur. ad. vult.*

— 9.—*Lord Kensington v. Bouverie*—Demurrer to bill allowed.

— 9.—*Perkins v. Eve*—Exceptions to Master's report overruled with costs.

### Vice-Chancellor Turner.

*In re Catling.* Nov. 4, 1852.

TURNER'S ACT.—TAKING ACCOUNTS OF INTESTATE AT CHAMBERS.

*The account to be taken under the 13 & 14 Vict. c. 35, s. 19, of the debts and liabilities of an intestate was directed to be taken by the Judge instead of the Master, under the 15 & 16 Vict. c. 80.*

THIS was an application for an order under the 13 & 14 Vict. c. 35, s. 19,<sup>1</sup> for an

<sup>1</sup> Which enacts, that "it shall be lawful for

account of the debts and liabilities of this intestate.

*Kinglake*, in support, referred to the 15 & 16 Vict. c. 80, under which such accounts are to be taken at Chambers.

The Vice-Chancellor made the order, as asked, in the form contained in the schedule to the Act, with the omission of directing it to the Master.

*In re Caddick.* Nov. 8, 1852.

JURISDICTION IN EQUITY IMPROVEMENT ACT.—CONVEYANCING COUNSEL.—PRACTICE.

*On a petition for the investment of purchase-money under the 8 Vict. c. 18, the practice is for the petitioner to select any one of the conveyancing counsel appointed under the 15 & 16 Vict. c. 86, for the investigation of the title.*

*Buller* applied on this petition, in which an order had been made approving of the investment of money paid into Court under the 8 Vict. c. 18, on real estates, as to which of the conveyancing counsel appointed under the 15 & 16 Vict. c. 86, were to investigate the title (reported *ante*, p. 18).

The Vice-Chancellor said, the petitioner would be at liberty to select any one of the counsel at his option.

Nov. 2.—*Davenport v. Davenport*—Order for payment into Court of purchase-money of estates sold under decree.

— 3.—*Marker v. Richards*—Part heard.

— 4, 5.—*Midland Railway Company v. Brown*—Arrangement come to.

— 6.—*Brenan v. Preston*—Injunction refused.

— 5, 6.—*Waterhouse v. Stansfield*—Claim dismissed without costs.

— 6.—*Chadwick v. Chadwick*—Judgment on exceptions to answer.

— 8.—*Thompson and others v. Daniel and another*—Stand over.

— 9.—*Doody v. Higgins*—*Cur. ad. vult.*

— 9.—*Young v. Hodges*—Part heard.

### Vice-Chancellor Kindersley.

*Bonfil v. Purchase.* Nov. 6, 1852.

IMPROVEMENT OF THE JURISDICTION IN EQUITY ACT.—ORDER OF COURSE TO REVIVE.—COUNSEL.

*The orders of course to revive under sect. 52*

the said Court, upon the application of the executors or administrators of any deceased person, by order to be made upon motion or petition of course, and to be in the form or to the effect set forth in the schedule hereto, with such variations as circumstances may require, to refer it to one of the Masters of the said Court to take an account of the debts and liabilities affecting the personal estate of such deceased person, and to report thereon."

of the 15 & 16 Vict. c. 86, will in future have only to be handed in without the application of counsel.

In this motion by Lewin for an order to revive the suit upon the death of the plaintiff, under the 15 & 16 Vict. c. 86, s. 52,

The Vice-Chancellor said, that in accordance with the suggestion of Mr. Monro, the registrar, the application of counsel to obtain these orders as of course, would in future be unnecessary, but they would be merely handed in.

*Mildmay v. Methuen.* Nov. 5, 8, 1852.

ABOLITION OF MASTERS IN CHANCERY ACT.—REFERENCE.—ASSISTANCE OF SCIENTIFIC PERSONS.

The Court refused a petition for a reference to the Master, with power to call in the assistance of scientific persons under sect. 42 of the 15 & 16 Vict. c. 80, upon the discharge of an order for leave to the petitioner to proceed at law in respect of a claim allowed by the Master in an administration suit against the testator for work done to his mansion-house, and directed the matter to be brought before a Judge at Chambers.

An order had been made by the Master in this administration suit, allowing as a claim against the estate of the late Lord Methuen, a balance incurred with the petitioner for works at the mansion-house of the deceased; and leave was given the petitioner on an application to the Court to proceed at law, but no proceedings had been taken thereon. This petition was now presented to discharge this order, and for a reference to the Master under sect. 42 of the 15 & 16 Vict. c. 80, which enacts that "it shall be lawful for the said Court or any Judge thereof, in such way as they may think fit, to obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, the better to enable such Court or Judge to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such persons."

*Malins, Beavan, Prior, and Jessel* for the several parties.

*Cur. ad. vult.*

The Vice-Chancellor said, the question was, whether that section authorised a delegation of the power to the Master. The opinion of the other Vice-Chancellors and himself was, that it was not intended to delegate any such power to the Master, but to enable the Judge instead to decide questions, and to call in the assistance of scientific persons. The order would therefore be discharged, and the matter go before himself at Chambers.

*Haines v. Barton.* Nov. 8, 1852.

SETTLING TERMS OF LEASES.—JUDGE AT CHAMBERS.—CONVEYANCING COUNSEL.

A petition for a reference to the Master to settle the terms of certain leases agreed to

be granted before the recent Acts came into operation, was directed to stand over, and the parties to attend at Chambers, and if they differed, the leases to be settled by a conveyancing counsel under 15 & 16 Vict. c. 86.

THIS was a petition for a reference to the Master to settle the terms of certain leases which had been agreed to be granted before the coming into operation of the recent Acts.

*W. Morris* in support.

The Vice-Chancellor said, the parties must attend the Judge at Chambers to settle the leases, and if the parties differed, the matter would be referred to one of the conveyancing counsel under the 15 & 16 Vict. c. 86, and the petition was directed to stand over for the purpose.

Nov. 4.—*Wilton v. Hill*—Stand over.

—4.—*Ex parte United Patriots' Benefit Society*—Order for committal upon non-production of papers by secretary in 10 days.

—5, 6.—*Oxford, Worcester, and Wolverhampton Railway Company v. South Staffordshire Railway Railway*—Stand over.

—6.—*Hopkins v. Walker*—Stand over to take accounts.

—5, 6.—*Mayor, &c., of Basingstoke v. Lord Bolton*—*Cur. ad. vult.*

—6, 8, 9.—*Petre v. Petre*—Part heard.

Vice-Chancellor Stuart.

*Rogers v. Jones and another.* Nov. 2, 5, 1852.

JURISDICTION IN EQUITY IMPROVEMENT ACT.—PROCEEDING WITH REFERENCE IN ABSENCE OF DEFENDANT.

In a claim for the administration of a testator's personal estate against the executors, who were also residuary legatees, one of the defendants died after the usual decree had been made, and his widow refused to take out letters of administration. An order was made under the 15 & 16 Vict. c. 86, s. 44, for the Master to proceed in the absence of the deceased's personal representative.

THIS was a claim for the administration of a testator's personal estate against the executors, who were also residuary legatees, and in which the usual decree had been made. The defendant, Richard Jones, died in June last, and his widow refused to take out letters of administration.

*Bird* appeared in support of an application under the 15 & 16 Vict. c. 86, s. 44,<sup>1</sup> for a di-

<sup>1</sup> Which enacts, that "if in any suit or other proceeding before the Court it shall appear to the Court that any deceased person who was interested in the matters in question has no legal personal representative, it shall be lawful for the Court either to proceed in the absence of such deceased person, or to appoint some person to represent such estate for all the purposes of the suit or other proceeding, on such notice to such person or persons, if any, as the

rection to the Master to proceed in the absence of the deceased's legal personal representative.

The *Vice-Chancellor*, after conferring with the other Judges, made the order.

*In re Beaufoy's Trust.* Nov. 6, 1852.

LANDS' CLAUSES' ACT.—PURCHASE-MONEY OF LEASEHOLDS FOR LIVES.—CONVERSION.

*Leaseholds held on lives were purchased for the purposes of a railway, and the money paid into Court under the 8 Vict. c. 18, and the last life dropped after such purchase. The testator's widow was tenant for life: Held, that under sect. 74 of the Lands' Clauses' Act, she was entitled to an order for payment out of Court to her of the fund and dividends thereon.*

THIS was a petition for the payment out of Court to the tenant for life of the purchase-money of certain leasehold lands taken for the purposes of the Oxford, Worcester, and Wolverhampton Railway, and which the testator had, by his will dated in 1823, devised to trustees during the existence of the two other lives for which they were held to his wife for life, with remainders over. It appeared that one of the lives dropped during the testator's lifetime, and the trustees were unable to arrange with the lessor for renewal after his death in 1833, and the last life dropped after the sale had been made to the company.

*Waley*, in support, cited *Phillips v. Sarjent*, 7 Hare, 33, and the 8 Vict. c. 18, s. 74, which enacts, that "where any purchase-money or compensation paid into the bank under the provisions of this or the special act, shall have been paid in respect of any lease for a life or lives or years, or for a life, or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any person interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion, in respect of which such money shall have been paid, or as near thereto as may be."

*Dart* for the trustees and parties entitled in remainder, contra, referred to *Bennett v. Colley*, 5 Sim. 181; *Colegrave v. Manby*, 5 Madd. 72.

The *Vice-Chancellor*, after referring to sect. 74, said, that the parties entitled in possession in the leaseholds should have the same benefit in the purchase-money as if no conversion had taken place, and as the remainder-man could have taken nothing upon the leases being allowed to expire, the petitioner was entitled to

Court shall think fit, either specially or generally by public advertisements."

an order for payment of the fund with the dividends thereon—the costs to be paid out of the fund.

*In re Chamberlain's Charity.* Nov. 8, 1852.

CHARITY.—RE-INVESTMENT IN LANDS.—TITLE TO BE APPROVED BY CONVEYANCING COUNSEL.

*A conditional contract was entered into for the re-investment in lands of the proceeds of sale of charity lands—the title was directed to be approved by the conveyancing counsel under 15 & 16 Vict. c. 86, and an affidavit to be adduced that the purchase was a proper one.*

*Metcalfe* appeared in support of this petition for the re-investment in other lands of the proceeds of sale of lands belonging to this charity, and for which a conditional contract had been entered into.

The *Vice-Chancellor* said, the title would have to be approved by the conveyancing counsel, and that an order would be made upon an affidavit of the purchase being a proper one.

*Cable v. Cooper.* Nov. 8, 1852.

TAKING EVIDENCE VIVA VOCE IN PENDING SUIT.—ORDERS OF AUGUST 7, 1852.—SETTING ASIDE SALE OF REVERSION.

*A suit to set aside the purchase of a reversion on the ground of inadequacy of consideration and fraud, was held a proper case for the evidence to be taken viva voce under Order 39 of August 7.*

THIS was a motion to take the evidence *viva voce* in this suit in which the purchase of a reversion was questioned on the ground of inadequacy of consideration and fraud. The cause was set down for hearing on June 29, and the interrogatories were filed early in July, and a day appointed for the examination of witnesses.

*Rogers* for the plaintiff, in support, referred to Order 39 of 7th August, which directs, that "in suits in which issue shall have been joined when these Orders come into operation, the evidence to be used at the hearing of the cause shall be taken according to the existing practice of the Court, unless the parties shall consent, or the Court shall order, that the same shall be taken in the mode prescribed by the Act 15 & 16 Vict. c. 86, and these Orders."

*Stevens* for the defendant.

The *Vice-Chancellor* said, that this was a proper case in which to take the evidence according to the new practice, and made the order accordingly.—Costs to be costs in the cause.

Nov. 3.—*McIntosh v. Great Western Railway Company*—Part heard.

—4.—*Hartley v. Barraclough*—Objection for want of parties overruled.

—4.—*Hutton v. Rosseter*—Order for administration decree, with leave to apply.

Nov. 4.—*Attorney-General v. Barker*.—Stand over.

— 6.—*In re Steward's Estate*.—Judgment on petition.

— 5, 9.—*Playford v. Playford and others*.—Bill dismissed without costs.

### Court of Queen's Bench.

*In re Stewart v Jones*. Nov. 8, 1852.

**SEWERS' RATE.—RECOVERY OF BY ACTION OF DEBT.—COUNTY COURTS.—JURISDICTION.**

*Rates for sewerage and cleansing a town were directed by the local act to be recoverable by action of debt in any of her Majesty's Superior Courts of Record at Westminster: Held, that the County Court had jurisdiction under the 9 & 10 Vict. c. 95, to entertain a plaint to recover a sum of 8l. odd, due for such rates, and a rule nisi for a prohibition was therefore refused.*

THIS was a motion for a rule nisi for a prohibition on the Judge of the Cheshire County Court from further proceeding in the above plaint, which was brought to recover the sum of 8l. odd, alleged to be due under the local act for sewerage and cleansing the town of Birkenhead (1 & 2 Vict. c. xxxiii.), which provided by sect. 18, that the rates might be recovered in any of her Majesty's Superior Courts of Record at Westminster.

*C. Pollock* in support; *T. Peyronnet Thompson*, contra, was not called on.

The Court said, that an action of debt was given for the recovery of the rates, and as it was therefore a personal action and within the limited amount, the County Court had jurisdiction under the 9 & 10 Vict. c. 95. The rule was therefore refused.

*Bryan v. Clay*. Nov. 9, 1852.

**ACTION AGAINST REPRESENTATIVE OF DECEASED RECTOR FOR DILAPIDATIONS.—PLEA IN BAR OF NON-PAYMENT OF SIMPLE CONTRACT DEBTS.**

*To an action brought on behalf of a present rector, against the executors of a deceased rector, to recover damages in respect of dilapidations, there was a plea in bar of the non-payment of the testator's simple contract debts: a demurrer to such plea was overruled.*

THIS action was brought, on behalf of the present rector, against the executor of the deceased rector of Worlington, Devon, to recover damages in respect of dilapidations, to which the defendant pleaded in bar the non-payment of the simple contract debts of his testator.

*Kingdon* now appeared in support of a demurrer to this plea; *M. Smith*, contra.

The Court said, the action was founded on a custom of the realm, which entitled the incumbent to sue in an action of tort the representative of a deceased incumbent, but it was on a peculiar custom, and not on the common prin-

ciples of the law of England, and must therefore be governed by all the incidents of the custom. All the authorities, from Degge in his Parson's Counselor to the present day, laid down that the claim must be postponed to all debts of simple contract as well as specialties, and it must consequently be inferred that such postponement was an incident of the custom. The plea was therefore a good plea in bar of the action, and the demurrer must be overruled, and judgment be for the defendant.

Nov. 2.—*In re John Smith, of Birmingham*.—Stand over.

— 2.—*Doe dem. Plews and others v. Walters*. Rule nisi on leave reserved to enter verdict for lessor of plaintiff, or for new trial.

— 2.—*Mellor v. Lough and another*.—Rule nisi to set aside verdict for plaintiff.

— 3.—*Hastings v. Brown*.—Rule nisi for new trial on ground of verdict being against evidence.

— 3.—*Regina v. Henson*.—Sentence herein.

— 3.—*Adey v. Master of the Trinity House*.—Rule nisi for prohibition.

— 3.—*Coibett v. Hudson*.—Cur. ad. vult.

— 4.—*Trustees of River Lea v. New River Company*.—Rule nisi to set aside verdict for defendants and for new trial.

— 4.—*Regina (on prosecution of Sir James Brooke) v. Eastern Archipelago Company*.—Rule nisi in arrest of judgment.

— 4.—*Edwards v. Lowndes*.—Rule nisi on leave reserved to enter verdict for plaintiff.

— 4.—*Regina (on prosecution of Earl Fitzhardinge) v. Davies*.—Rule nisi for criminal information for libel.

— 4.—*In re Blagg, Gent., one, &c.*.—Rule nisi on attorney to deliver up documents.

— 4.—*Russell v. Wilson*.—Rule nisi to enter verdict for defendant or a nonsuit on leave reserved.

— 5.—*Haywood v. Potter*.—Rule nisi on leave reserved to enter verdict for plaintiff.

— 5.—*Edwards v. Lowndes*.—Rule refused to enter verdict for defendant.

— 5.—*Mayor, &c., of Berwick v. Renton*.—Rule nisi to set aside verdict for defendant, and for new trial.

— 6.—*Brasfitt v. Winterbottom*.—Rule refused to set aside verdict for defendant, and for new trial, on the ground of verdict being against evidence.

— 6.—*De Meroda v. Dawson and others*.—Rule nisi to set aside nonsuit and for new trial.

— 8.—*Regina (ex parte Croll) v. Tallis*.—Rule nisi for criminal information for libel.

— 9.—*Kipling v. Ingram*.—On special case, judgment for the defendant.

### Queen's Bench Practice Court.

(Coram Mr. Justice Crompton).

*Regina v. Mayor and Assessors of Harwich*.  
Nov. 9, 1852.

**MUNICIPAL CORPORATIONS' ACT.—NOTICE OF OBJECTION TO NAME ON BURGESS-ROLL.—MANDAMUS.**



*A notice of objection to the name of a person on the burgess-roll was given to the voter, in the following form:—I hereby give you notice that I object to your vote, &c.: Held, insufficient, under the 5 & 6 Vict. c. 76, as not describing the person objected to, and a mandamus was refused on the mayor and assessors of the borough, to adjudicate on the objection founded on that notice.*

THIS was a motion for a rule nisi for a mandamus on the defendants, to adjudicate on an objection which had been raised to the name of William Butcher on the burgess-roll. It appeared that the defendants had retained the name on the list, upon the ground that the notice of objection given to Mr. Butcher was insufficient. The notice was as follows:—"I hereby give you notice that I shall object to your vote," &c.

By the schedule D., No. 3, to the 5 & 6 Wm. 4, c. 76, (Municipal Corporations Act), which directed a form of notice to be given to the voter, to the effect as was directed to be given to the town clerk, the form was:—"I hereby give you notice that I object to the name of —, of —, in the parish of —," &c.

*Lush* in support.

The Court said, that the Act directed a description to be given of the person objected to, and that the notice given was therefore insufficient, and refused the rule.

Nov. 2.—*Regina v. Justices of Derbyshire*—Rule nisi for mandamus on defendants to enter and hear appeal from conviction under Vagrant Act.

— 2.—*In re Craven*—Rule nisi to review taxation of costs.

— 5.—*Regina v. Foxall*—Rule nisi for *certiorari* to bring up inquisition before coroner.

— 5.—*Welsh v. Jonides*—Rule nisi for prohibition to County Court Judge.

— 5.—*Regina v. Hamp and others*—Rule nisi for *procedendo*.

— 6.—*Regina v. Judge of — County Court*—*Cur. ad. vult.*

— 6.—*Regina v. Moon*—Rule nisi on defendant to grant warrant of distress for non-payment of poor-rates.

— 6.—*In re Hakewell and others*—Rule nisi for attachment for contempt.

— 8.—*Ex parte Tocque*—Rule nisi for discharge of clerk from articles of clerkship, and for liberty to enter into fresh articles, where his former master had absconded to avoid his creditors.

— 9.—*In re Richard Sill*—Rule nisi to strike attorney off the Roll upon conviction for obtaining money under false pretences.

— 9.—*In re James Thomas Russell*—The like.

#### Court of Common Pleas.

Nov. 2.—*Harris v. Thompson*—Rule nisi for new trial on the ground of verdict being against evidence.

Nov. 3.—*Roberts v. Bethell*—Rule nisi to enter verdict for plaintiff.

— 3.—*Parker v. Great Western Railway Company*—Rule refused for review of taxation of costs.

— 3.—*Cleasby v. Cook*—Rule nisi to enter verdict for plaintiff.

— 3.—*Harris v. Thurskell*—Rule nisi for new trial.

— 4.—*Holmes v. London and North Western Railway Company*—Rule nisi on leave reserved to enter verdict for defendants.

— 4.—*Peterson v. Ayre*—Rule nisi.

— 4.—*Liddle v. Newport and Abergavenny Railway Company*—Rule nisi to enter verdict for plaintiff.

— 4.—*Roberts v. Grant and others*—Rule refused.

— 4.—*Dodd v. Carrack*—Rule refused.

— 5.—*Roberts and another v. Cobbett*—Rule refused for new trial on the ground of the improper reception of evidence.

— 5.—*Moffatt v. Dixon*—Rule nisi to set aside verdict, or for new trial.

— 5.—*Duncan v. Tindal*—Rule nisi to enter a nonsuit.

— 5.—*Mathew v. Osborn*—Rule nisi to enter verdict for defendant or reduce damages.

— 6.—*Griffiths v. Espinasse and another*—Rule refused for new trial on the ground of misdirection and verdict being against evidence.

— 8.—*James v. Isaacs and others*—On demurrer to plea, judgment for plaintiff.

— 8.—*Story v. Story*—Motion refused for writ of prohibition.

#### Court of Exchequer.

Nov. 2.—*Morgan v. Clifton*—Rule nisi for new trial on the ground of verdict being against evidence.

— 3.—*Lines v. Lord F. Russell*—Rule nisi for new trial on the ground of misdirection.

— 3.—*Mulhall v. Nevill*—Rule nisi to set aside verdict for plaintiff and for new trial—*Cur. ad. vult.*

— 4.—*Waters and others v. Towers*—Rule nisi to increase damages on leave reserved.

— 4.—*Todd v. Kerridge*—Rule nisi to enter a nonsuit—*Cur. ad. vult.*

— 4.—*Chew v. Holroyd*—Rule nisi for prohibition.

— 4.—*Heslop v. Baker and others*—*Cur. ad. vult.*

— 5.—*Attwood v. Hill*—Rule refused for new trial.

— 5.—*Steadman v. Knight*—Rule nisi for review of taxation.

— 5.—*Duff and others v. Gant*—Rule nisi for new trial on the ground of misdirection.

— 6.—*Palmer v. Trower*—Rule nisi for new trial.

— 8.—*Guardians of Romford Union v. British Guarantee Association*—Rule nisi to set aside verdict for defendants and for new trial.

— 8.—*Leveroni v. Drury*—*Cur. ad. vult.*

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, NOVEMBER 20, 1852.  
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### PROCEEDINGS IN PARLIAMENT

#### FURTHER LAW REFORMS.

IN addition to the measure announced in the Speech from the Throne, in reference to the jurisdiction exercised by the Ecclesiastical Courts in matters testamentary, the Lord Chancellor, on behalf of the Government, has taken an early opportunity of enumerating the other measures relating to the law which it is intended to submit to Parliament, with a clearness and amplitude of detail which has afforded general satisfaction.

Before endeavouring to present our readers with an outline of the specific measures which are about to be introduced, we must be permitted to express our unqualified gratification at the public and explicit recognition to be found in Lord St. Leonards' speech, of the great principle, that the *costs of maintaining our judicial establishments should be paid by the country*, and not by the suitors. His lordship properly distinguished between the expenses of administering justice, and the expenses of administering property through the instrumentality of a Court of Justice, observing, that "every man ought to have a right to go into the Court itself free of expense, and to have the opinion of the Judge; but if he has accounts to be taken, or an estate to be watched and kept in order, he is no more entitled to have the expense paid for him in Court, than if the operation took place out of Court." The accuracy and fairness of this distinction, we are persuaded, will obtain universal assent. In the judgment of the Lord Chancellor, the changes which have been, and are about to be, introduced in the Court of Chancery will produce the most startling results. Not only does he think, that "there is no

Court in the country in which questions of property will be decided so *rapidly* as there —by rapidity not meaning haste, but good speed consistent with mature deliberation," —but he believes that "the hour will come, and is not far distant, when the suitors in the Court of Chancery will have *no costs whatever to pay for the administration of Justice*, irrespective, of course, of those costs which must always exist between solicitor and client." His lordship even goes further, he thinks that the fund now administered by the Accountant-General will eventually be sufficient to pay the salaries of the Judges, and that the public should then be relieved from such payment; but that until the funds in Court are sufficient, the Judges should be paid out of the Consolidated Fund. If even a portion of the advantages thus anticipated should be realised, undoubtedly the present and future suitors of the Court of Chancery will have reason to rejoice, and a great boon will be bestowed upon the country.

As to the *present* means by which the intended reforms in the Court of Chancery are to be effected, after adverting to the fact, that the saving to suitors between the fees imposed last year and the fees imposed under the scale just issued, amounts to no less than 36,000*l.* a-year, Lord St. Leonards proceeded to state, that by getting rid of the expense consequent upon the sale and purchase of stock by the Accountant-General, a saving of 12,000*l.* a-year would be effected for the benefit of the suitors. It was also proposed, that in cases where the accounts of dividends had not been dealt with for many years, and which were therefore in the nature of "unclaimed dividends," the fund created by investing such dividends, should be applied to the administration of justice, so as to relieve the suitors, and ultimately to relieve the Con-

solidated Fund. The statistics upon which this scheme is founded, and the machinery by which it is to be carried into effect, are disclosed in the Chancellor's statement, and will be more conveniently considered on a future occasion. Whilst referring to the Accountant-General's department, however, it should be mentioned, that the Lord Chancellor announced that arrangements were contemplated, by which the well-founded complaints arising from the *closing of the Accountant-General's Office during the Long Vacation* would be obviated.

With respect to *Masters Extraordinary in Chancery*, they are in future to be called "Country Agents to administer Oaths in Chancery;" the expense of the appointment is to be reduced from 8*l.* or 9*l.* to 1*l.* and the appointment is not, as heretofore, to be gazetted.

As supplemental to the Act of last Session for amending the law in relation to *Patents for Inventions* (15 & 16 Vict. c. 83), a short Bill is to be introduced, by which the fees payable upon granting patents, &c., are in future to be collected by stamps, thus extending to the officers of this department the principle recently adopted in other offices connected with the Court of Chancery.

In reference to the *Jurisdiction in Lunacy*, very considerable changes are contemplated, with a view to diminishing expense. References from the Court to the Master, and reports from the Master to the Court, are to be dispensed with whenever it is practicable, and the inquisition by a jury is not to be allowed as matter of course. Instead of a Lunatic Commission in each instance, there is to be a standing Commission, which is to proceed with the inquiry after notice to the person intended to be declared a lunatic. Even if the party directly affected by the inquiry desires a jury, the Chancellor is to determine whether the proceeding before that tribunal is expedient; and enactments are to be proposed to protect lunatics and the public from the danger of persons being at large who are of unsound mind. There are also some new enactments intended with reference to lunatics charged with the commission of offences.

The *administration of the Law of Bankruptcy* appears to have had a large share of the attention of the Lord Chancellor during the Vacation. He proposes now to introduce a Bill by which some alteration is to be made as to the principle upon which the Commissioners are required to grant *certi-*

*ficates of three different classes* to bankrupts, and it is proposed that, upon application for a certificate, the inquiry shall be confined to a consideration of the bankrupt's acts as a trader rather more than it has hitherto been. It is also intended to diminish the per centage payable to the Chief Registrar's account upon sums over 1,000*l.* The Commissioners of Bankruptcy are to be made auxiliary to the Court of Chancery in many cases, and are to have jurisdiction under what has been known as the *Dead Man's Clauses*, where the debts of a trader remain unpaid for a certain time after his death. It now appears, beyond doubt, that the Chancellor does not concur in the project of handing over the jurisdiction in bankruptcy to the County Court Judges, as suggested in the Bill introduced last Session by Lord Brougham. The earliest occasion was taken in this publication to announce the supposed intention to renew this most objectionable scheme, and we rejoice to find that the subject has been taken up with promptitude and decision by the Liverpool Law Society, a body than which none in the kingdom is more capable of estimating its merits. In the annual report (published in our last Number, p. 31), the Committee observe, that they consider the change would be "highly injudicious as in almost all instances, independently of the Judges of the County Courts having already sufficient employment in their Courts as now constituted, the Judges are not familiar with the practice in Bankruptcy, and the machinery of the Courts is not adapted to the working and healthy management of important bankruptcy matters." We are glad to perceive that Lord St. Leonards has fortified this view by the weight of his authority, and has formally announced that it is not the present intention of the Government to bring in any Bill for further extending the Jurisdiction of the County Courts. Whilst referring to the Bankruptcy jurisdiction, the Lord Chancellor made some observations in reference to a subject of some professional interest, lately much discussed, the *relations between the two branches of the Profession*. His lordship is reported to have thus expressed himself:—

"Solicitors are now permitted to appear as advocates before the Commissioners of Bankruptcy. I propose to put the same restriction upon solicitors in bankruptcy as is now put upon attorneys under the County Courts Act. That is, my lords, I object to what are called attorney-advocates, I do not object to a man's solicitor arguing his case for

him, but I do object to an attorney being turned into a barrister and acting as an advocate. I desire to see the Profession stand upon its proper basis. I wish the barrister not to trench upon the province of the attorney, nor the attorney upon the province of the advocate. Depend upon it, my lords, if the system which has so long prevailed be broken in upon, great evils will ensue. Whether in any respect it will tend to elevate the character of the Bar remains to be determined; but, at any rate, there must be equality. It so happened last year, that in the difference of opinion which prevailed among my noble and learned friends, it virtually fell to my lot to remove the prohibition which formerly existed against counsel acting without attorneys; while I did so, I took care expressly to state that I gave that vote upon the distinct statement that attorneys had threatened the Bar, that if they took business into the County Courts they should not have business elsewhere. I meant to leave it, therefore, to the honour of the Bar to act as they have always acted, not intending to open the door at all unless there be an absolute necessity for it to the practice of barristers acting without the intervention of solicitors—a practice, in my eyes, highly objectionable, and one which I should be the last person to countenance. Any such serious change in the long-established usages of the Bar ought at any rate to be made with the concurrence of a large majority, but I entirely object to any small number, or even to any considerable number taking upon themselves to act contrary to the general rule of the Profession, which has been established for so long a period. My lords, the Bar at the present moment is in a state of transition, and I would recommend everybody having any voice or any influence in this matter, to consider where—if you lower the station or position of the Bar—you are to look for learned persons to fill your benches and carry on the administration of justice. You cannot expect that a man will dedicate a long life to the labours of the Bar without some hope, and some proximate hope, of reward."

Upon the subject of *Criminal Law*, the Lord Chancellor stated, that though opposed to what is called *codification* generally; he thought it might be advantageously adopted, to some extent, with respect to *Criminal Law*. It was intended to have a *Criminal Law Digest*, which it was meant to deal with by separate bills to allow an opportunity of introducing requisite amendments. In pursuance of this plan, a bill relating to *Offences against the Person* was already prepared, and would speedily be laid before Parliament.

With respect to the intended measure announced in the Queen's Speech, for harmonising and assimilating the powers of the different Courts as regarded *testamentary dispositions*, the Lord Chancellor an-

nounced, that a Commission was appointed, consisting of one of the Vice-Chancellors, Mr. Rolt, Sir John Dodson, Sir Stephen Lushington, and Dr. Harding.

Future and more convenient opportunities will arise, for considering in detail the various subjects referred to in the Chancellor's statement, which, whether considered with reference to the position, authority, and experience of him who made it, the occasion and circumstances under which it was made, or the nature and character of the statement itself, must be regarded as full of importance and interest to the Legal Profession and the Public.

## EDUCATION FOR THE BAR.

### PUBLIC LECTURES.

OUR readers were some time since informed, that the Benchers of the Four Inns of Court, intrusted with the power of calling students to the Bar, had at length been induced to devote a small portion of the large revenues which they administer to the purposes of Legal Education; and had appointed a standing Council of Eight, selected from the Four Inns, for purposes of general superintendence.

It was also announced that, in pursuance of the plan determined upon, five Readers were appointed, whose duties were to deliver public lectures during the three educational Terms into which the legal year was divided, as well as to instruct students forming themselves into classes, by private lectures and examinations. The five readers appointed by the Benchers, had for their distinct provinces:—1st, Constitutional Law and Legal History; 2ndly, Jurisprudence and Civil Law; 3rdly, Equity; 4thly, The Law of Real Property; and 5thly, Common Law.

Although the scheme of Legal Education adopted by the Benchers is essentially objectionable, inasmuch as it proceeds upon the narrow and illiberal principle of confining the educational benefits provided, scanty as they are, to students for the Bar, and excluding from all participation the more numerous branch of the Profession, upon public grounds, we should rejoice to find it successful, even to the limited extent anticipated. We now begin to realise the serious injury inflicted upon society by rendering the Bar *the cheapest of all the learned Professions*, and at the same time taking no adequate precaution against the admission to its ranks of uneducated and

incompetent men. The family has grown too large to submit to the regulations and restraints necessary for the preservation of its own character and independence, and defying control, upon the failure of legitimate resources, recklessly invades the dearly-purchased privileges of others. If the utility of the Bar is diminished and, as some predict, its existence as a distinct branch of the Profession threatened, the Benchers of the Inns of Court are, in a great measure, morally responsible for the result. It is in vain to expect that the mischief produced by indiscriminate and unlimited admission to the Bar, can be prevented by affording such opportunities for professional instruction as those the Benchers have now provided, but the present movement may be fairly regarded as the commencement of a new system, which will admit of expansion and to which we wish success.

From the prospectus published by the Council of the Inns of Court, we learn that only three of the five Readers were prepared to proceed with the public lectures at the commencement of the present educational Term.

—The subjects of the lectures on “Law and Legal History,” were as follow:—

“1st Lecture.—The genius of the English Constitution, civil and ecclesiastical, contrasted with that of France during the reign and at the accession of Elizabeth.

“2nd and 3rd Lectures.—The progress and establishment of the Constitution during the reigns of James the 1st and Charles the 1st, until the breaking out of the civil wars.

“4th and 5th Lectures.—Proceedings in Parliament and the Courts of Justice from the Restoration to the Revolution.

“6th Lecture.—The Revolution of 1688.

The Equity Reader proposed to give six lectures on “The History of the Court of Chancery,” its mode of procedure, and the general principles on which justice is there administered. The following is the outline of this course:—

“1st Lecture.—The ancient office of Cancellarius; of Chancellor of England after the Norman Conquest. The Aula Regis. The Exchequer. Chancellor of the Exchequer. General view of the System on which Justice was administered. Share of the Chancellors and influence of the Civil Law in the formation of this System. Its advantages. The Power of the Council. How delegated to the Chancellor. The Subjects on which his Authority was usually exercised. Its great extent and importance. Alterations in the Constitution and Practice of the Court.

“2nd Lecture.—The Custody of the Great

Seal. Its connexion with the office of Chancellor. The Privy Seal and Court of Requests. The Court of Star Chamber. Common Law Jurisdiction of the Chancellor: his Jurisdiction over Charities and Lunacy. Appellate Jurisdiction of the House of Lords.

“3rd Lecture.—Procedure of the Court of Chancery, sitting as a Court of Equity. How related to that under the Civil Law. Bill of Complaint. Modes of compelling Appearance. Demurrer. Plea. Answer. Replication. Evidence. Decree.

“4th Lecture.—On the nature of the Relief granted by the Court of Chancery. Specific Performance. Discovery. Injunction. Mode of enforcing Decrees of the Court.

“5th Lecture.—Principles on which the Equitable Jurisdiction of the Court of Chancery was established. Reference to the Rules of Conscience. Influence of the Study of Casuistry. The Jurisdiction of the Court gradually assumes a complete and settled form.

“6th Lecture.—General division of the cases in which relief is afforded by Courts of Equity. Where relief cannot be obtained at Law. Where less perfect relief can be obtained at Law than in Equity. Where the remedy at Law is inconsistent with Equity. Where a Court of Law requires the assistance of a Court of Equity.”

The public lectures to be delivered by the Reader on the “Law of Real Property,” are thus described in the prospectus:—

“I. Introduction.—An historical view of the modifications which the Municipal Law of this country has at different times received, with reference to the power of alienating real and personal property.

“II. An inquiry into the restrictions which have been imposed upon the power of alienation.

“1. From motives of public policy:

“a. By the Statutes of Mortmain, viz.:—9 Hen. iii. c. 36; 7 Edw. i. st. c. 2; 13 Edw. i. c. 32, 33; 18 Edw. i. c. 1; 15 Ric. ii. c. 6; 7 & 8 Wm. iii. c. 37.

“b. By the Statute of 9 Geo. ii. c. 36. Under this head the whole Law of Charitable Uses will be entered into. [23 Hen. viii. c. 10; 1 Edw. vi. c. 14; 43 Eliz. c. 4.]

“c. By the rule against perpetuities.

“d. By the Thellusson Act; 39 & 40 Geo. iii. c. 98.

“2. From a desire to protect the rights and interests of third parties, as creditors and purchasers. [13 Eliz. c. 5; 27 Eliz. c. 4.]”

As to the Lectures on “Jurisprudence and Civil Law,” it is announced that, in consequence of the severe illness of the Reader, he is at present unable to enter upon his duty; and as to the lectures on “Common Law,” the Council state, that having unexpectedly received information that Mr. Willes had resigned the office of

Reader on the Common Law, they were unable, for the present, to announce any lectures in that department.

We have since been informed, that the Benchers of the Inner Temple lost no time in supplying the vacancy occasioned by the resignation of Mr. Willes, and have appointed Mr. Herbert Broom, who is favourably known to the Profession as a legal author, as the Reader on the Common Law.

## THE BAR AND THE ATTORNEYS.

*To the Editor of the Legal Observer.*

SIR, — In a recent walk through the ancient precinct of Alsatia, now better known as Whitefriars, I picked up a paper which, when restored to a legible condition, proved to contain memoranda of some intended application to Parliament, and being in the exact track to Printing-house Square, I think I do not greatly err in assuming its accidental departure out of the otherwise empty pocket of the junior barrister of seven years' standing, whose lamentation appeared in *The Times* of the 2nd inst., and I subjoin a copy of it accordingly for the edification of your readers.

The document in question feelingly exhibits the position and prospects of this unhappy junior barrister, who in his despair can find no other epithet to apply to the attorneys as the cause of all his grievances, than as a *band*, and in his short epistle this seven years' barrister does seven times designate them as a band of attorneys, and well it is for his wretched victims that he called them not a gang. Perhaps he borrowed the milder phrase from Lord Denman, who, in his letter to Mr. Cox, styles the Bar of England as an *illustrious band*, while, but for my sincere respect for many of that self-constituted learned body, I could furnish a very amusing, and no scanty list of a considerable section of the *illustrissimi* adverted to by his lordship.

To me, who am old enough to remember that Bar as composing a really learned, brilliant, and illustrious Corinthian capital of Law, without the admixture of one disreputable name or character among them, it is a melancholy contemplation to witness the mercenary and vulgar jealousy with which an obscure portion of that Bar are clamouring for an exclusive share of that remuneration which they have neither the ability to earn nor the honour

or honesty to enter into equal competition for with the band of attorneys.

If barristers think fit thus to repudiate ~~one~~ old-established rule of their Profession, they should be content to submit the entire code of their protecting and *productive* rules to a searching revision, and which would afford more relief to a suitor than the severest taxation of his attorney's bill.

I have another rod in pickle for these gentlemen of the seventh form, should they venture a further onslaught emanating from their briefless bags and brainless heads.

I am, Sir, your humble servant,

M. M. M.

*Athenæum, 19th Nov. 1853.*

### MEMORANDA OR HEADS OF A BILL FOR RESTRAINING THE PRETENSIONS OF ATTORNEYS.

No person to be admitted to practise as an attorney who shall have been educated at a collegiate or classical school, or matriculated at any university.

Attorneys not to be eligible to sit in Parliament.

No student of an Inn of Court who is a son, grandson, brother, or nephew to an attorney, to be called to the Bar.

Any barrister who shall marry the daughter, grand-daughter, sister, or niece of an attorney, to be forthwith disbar'd.

*Penalties by way of additional protection to junior barristers of seven years' standing.*

Any attorney giving a brief to a son, grandson, nephew, brother, or son-in-law to ~~forfeit~~

For the first offence . . . 100*l*.

For the second . . . 1000*l*.

For a third, to be struck off the Roll.

N.B.—Worthy to be considered, whether the pillory should not be revived for so flagrant an offence.

No attorney to be qualified to hold any legal appointment under Government, or from a corporation or public company, except with the sanction and recommendation in writing of twenty junior barristers of seven years' standing.

Attorney not competent to be examined as to speak on his own behalf, but to have the privilege of employing a junior barrister?

Any attorney presuming to be covered, or to sit in the presence of a barrister, to be adjudged guilty of a contempt of Court.

*Sweeping Clause.*

Summary jurisdiction and power given to any two barristers to fine and imprison attorneys offending as above, on the information and complaint of any barrister.

**LAW OF COSTS.****WHEN TRUSTEES LIABLE TO COSTS.**

CONSIDERING the importance of securing intelligent, competent, and responsible persons to act as trustees, it is not the practice of the Court to visit trustees with costs, except where they act from interested motives, or intentionally and wantonly conduct themselves in a vexatious and oppressive manner.

In the case of *Noble v. Meymott*, recently reported, 14 Beav. 471, the Master of the Rolls, in delivering his judgment, said—

“Mr. Meymott does not appear to me to have been unwilling to do whatever he could to meet the wishes of the persons interested, provided it could be done with perfect safety to himself; but the real claim,—viz., that for the 1,050*l.*, which alone could be supported, was not made to him before the bill was filed.

“Now, considering how severely this Court visits trustees who are guilty of any breach of trust, with the consequences of such an act, even if it be done innocently and under the best advice they can obtain, it is very important that the Court should not so act as to make it almost impossible to get intelligent, competent, and responsible persons to act as trustees. It is certainly not the duty or the practice of this Court in cases of this description to visit trustees with any penalties in the shape of costs, except when they act from interested motives, or wantonly and intentionally conduct themselves in a vexatious and oppressive manner.

“I see nothing here to induce me to believe that Mr. Meymott acted from any interested motive, or that he was desirous to do anything more than protect himself.

“The result is, that, much as I regret this suit and the expense occasioned by it, while I am compelled, in justice to the plaintiffs, on the one hand, to make a decree for the transfer of the funds, I am, on the other, compelled to say, that the defendant has not so acted as to disentitle him to the costs of the suit.”

**FURTHER ORDERS IN CHANCERY.****OFFICE COPIES.—CALCULATION OF FOLIOS.**

10th November, 1852.

The Right Honourable Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in

the 15 & 16 Vict., intituled “An Act for the Relief of the Suitors of the High Court of Chancery,” and in pursuance and execution of all powers enabling him in that behalf, order and direct as follows, *vide* *Neet* :—

All office copies and other copies of proceedings and documents shall be counted after the rate of 90 words to the folio; and where the same, or any portion thereof, shall be written with columns containing figures, in every such case each figure or combination of figures representing a distinct denomination shall be counted as one word, therefore 4,151*l.* 16*s.* 9*d.* would count as three words.

(Signed)

ST. LEONARDS, C.

**ADDITIONS TO PATENT LAW AMENDMENT ACT.**

THE following additions or alterations have been made to the Orders of 1st October :—

The drawings accompanying provisional specifications shall be made upon a sheet or sheets of parchment, paper, or cloth, each of the size of 12 inches in length by 8½ inches in breadth, or of the size of 12 inches in breadth by 17 inches in length, leaving a margin of one inch on every side of each sheet.

The Lord Chancellor having appointed the Great Seal Patent Office to be the office of the Court of Chancery, for the filing of specifications, the said Great Seal Patent Office and the Office of the Commissioners shall be combined; and the clerk of patents for the time being shall be the clerk of the Commissioners for the purposes of the Act.

All specifications in pursuance of the conditions of letters patent, and all complete specifications accompanying petitions for the grant of letters patent, shall be respectively written bookwise upon a sheet or sheets of parchment, each of the size of 21½ inches in length by 14½ inches in breadth; the same may be written upon both sides of the sheet, but a margin must be left of 1½ inches on every side of each sheet.

The drawings accompanying such specifications shall be made upon a sheet or sheets of parchment, each of the size of 21½ inches in length by 14½ inches in breadth, or upon a sheet or sheets of parchment, each of the size of 21½ inches in breadth by 29½ inches in length, leaving a margin of 1½ inches on every side of each sheet.

*Note.*—It is recommended to applicants and patentees to make their elevation drawings according to the scale of one inch to a foot.

¹ If not in columns, the rule, it seems, would not apply.—Ed.

## FURTHER PATENT LAW RULES.

8th November, 1852.

By the Right Honourable Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain; the Right Honourable Sir John Romilly, Master of the Rolls; Sir Frederic Thesiger, her Majesty's Attorney-General; and Sir Fitz Roy Kelly, her Majesty's Solicitor-General, being four of the Commissioners of Patents for Inventions under the Patent Law Amendment Act.

Whereas by order of the Commissioners, dated the 15th of October last, the applicant desiring his letters patent to extend to any of the colonies, is directed to specify in his petition for the same the particular colony or colonies to which he desires it to extend.

And whereas many petitions left at the office of the Commissioners before and after the date of the said Order, pray for the extension of the letters patent to all her Majesty's colonies and plantations abroad.

It is ordered, That in every such case the applicant or his agent shall leave at the office of the Commissioners a notice in writing, either specifying the particular colony or colonies to which he desires his letters patent to extend, or withdrawing altogether his application to extend his letters patent to the colonies; and no reference of such petition shall be made to the law officer for his warrant for the sealing of letters patent until such notice shall have been left at the said office.

(Signed) ST. LEONARDS, C.  
JOHN ROMILLY, M. R.  
FRED. THESIGER, A. G.  
FITZROY KELLY, S. G.

## REGULATIONS AT THE CHANCERY REGISTRAR'S OFFICE.

### STAMPS.—PRACTICE.

SOME alterations having been made in the regulations for the supply of stamps, since our last notification, we give them as now amended:—

#### *New Orders.*

1. The amount of the stamp to be marked on the minutes.
2. The writer will supply the stamp when the order is copied, and will return the papers to the seat, but retain the order.
3. When the solicitor applies for the order his papers will be delivered to him and he will be told that he will receive the order from the writer on paying for the stamp.

#### *Orders of Course.—Printed Forms.*

4. Where printed forms are used, the registrar's clerk will tell the solicitor what form is required, and the solicitor will obtain the stamped form from the writer and leave it with his papers.

### *Office Copies.*

5. The stamps will be paid for to the writer on bespeaking.

*Orders dated prior to Michaelmas Term, 1852.*

The writer will get stamps affixed on orders requiring the same, which shall have been marked with the proper amount of stamp by the registrar, thus (stamp 2*l.*), and left with the writer with the money.

## RELATION OF THE TWO BRANCHES OF THE PROFESSION.

### RESTRICTIONS OF THE INNS OF COURT.

In the discussions that have taken place relating to the practice of barristers and attorneys, it is but just towards those Journals which advocate the right of the barrister to act without the intervention of an attorney, to state that—in return for the establishment of their claim—they are willing to remove the restrictions which the Inns of Court have interposed against the call of attorneys-at-law to the higher degree of barrister-at-law. The Editor of the *Legal Examiner* thus writes in the Number of the 6th November:—

“The whole structure of the Profession itself is clearly on the eve of a great change. If any other evidence had been wanting on this subject, the present active movement of the Junior Bar in favour of direct communication with the client, and the recent meeting of the attorneys and solicitors at Derby, which we reported in our columns a week ago, would have been sufficient to convince the most sceptical that great changes are at hand. The Junior Bar see the necessity of identifying their interests with those of the people, and the solicitors are evidently fully alive to the injury to their Profession, which results from their exclusion from the Inns of Court. In this matter both are quite right, and are aided in their views by the Society for Promoting the Amendment of the Law, who, it will be remembered, in the report of their Committee on the Bar, the Attorney, and the Client, recommend:—

“1st. That any practice which has a tendency to prevent the public from obtaining the assistance of counsel, except through the compulsory intervention of an attorney, should be discontinued.

“2nd. That so much of the 91st section of the Act of the 9 & 10 Vict. c. 95, as prevents a barrister from advocating the causes of suitors in the County Courts, “unless instructed by an attorney,” should be repealed.

“3rd. That attorneys should not be permitted to act as advocates in the Superior Courts.

“4th. That attorneys should be eligible to be called to the Bar without any intermediate cessation from practice.

“5th. That counsel should be made respon-



able to their clients for *crassa negligentia* in breach of contract, and breach of confidence.

"6th. That a legal university, composed of the Inns of Court, and governed by an elected senate, should be established; and that such senate should have jurisdiction in all questions concerning the discipline and conduct of the Bar.

"7th. That all candidates for admission to the degree of barrister should pass a public examination."

The Editor then observes, that the movement by the section of the Junior Bar to which he alludes, has gone far to carry the first resolution into effect. The Legislature has given effect to the second, and he sees every reason to look with confidence to the speedy adoption of the four last.

The writer further states, that he fully agrees with Mr. Rann Kennedy in his views as to the great benefit which would accrue to the public by the establishment of a local Bar in every large town, but he thus proceeds:—

"We entirely disagree with him in the invicious distinction which he has drawn between the position of barristers and attorneys. According to Mr. Kennedy, barristers are "gentlemen and scholars," but attorneys are altogether quite a different race. Mr. Kennedy really seems to have entirely forgotten that the great body of attorneys hold an equal position with the great bulk of the Bar. It is now, we think, about 30 years ago that the Legislature passed an Act which enabled graduates of the Universities of Oxford and Cambridge to be admitted to practice the law as attorneys and solicitors, after a clerkship of three years instead of five years, the period fixed for non graduates. That provision has since been extended to the graduates of London and Durham, and the Queen's Colleges in Ireland, and the number of graduates who have since these provisions sought admission into the attorney's branch of the Profession has gradually increased, and of those who enter that branch of the Profession without graduating at our universities, a large majority are men who have received their education at our principal public schools. But, indeed, for a period of upwards of 100 years, the attorneys have been, as a body, taken from a much higher grade of society than previously to that period. It is mere affectation, then, or something worse, to sneer at attorneys as men of an inferior status to the members of the Bar."

## NEW POINTS OF COMMON LAW PRACTICE.

### EXECUTION IN CAUSES TRIED IN TERM.

The Common Law Procedure Act having abolished the *distringas juratores*, but with no provision regarding the issuing execution in

causes tried in Term, the Courts of Queen's Bench, Common Pleas, and Exchequer, until the general rules have been made, will make a special order for judgment in each case; the period following the old practice will be four days.

### ADMISSION OF DOCUMENTS, HANDWRITING, &c.

In undefended causes in which evidence is adduced of admissions of handwriting and documents, &c., Mr. Baron Martin intimated his opinion, that all evidence of such admissions ought to be supplied by the attorney on the record, or by one of the firm of which he might be a member, and not by clerks, although that evidence was made sufficient under the 158th section of the Common Law Procedure Act.

## LOCAL AND PERSONAL ACTS,

Declared Public, and to be Judicially Noticed.

15 & 16 VICT. 1852.

1. An act for repealing the act relating to "The Mansfield Gaslight Company," and for conferring upon the company further additional powers; and for other purposes.
2. An act for the Incorporation, Establishment, and Regulation of the "Patent Solid Sewage Manure Company," and for enabling the said company to purchase and work Letters Patent.
3. An act for establishing a Public Library, Museum, and Gallery of Arts at Liverpool, and to make provision for the reception of a Collection of Specimens illustrative of Natural History presented by the Earl of Derby for the benefit of the inhabitants of the borough of Liverpool and the neighbourhood thereof, and others resorting thereto.
4. An act for repealing the Wolverhampton Gas Act, 1847, and for re-constituting the company with additional powers; and for other purposes.
5. An act to amend an Act for draining certain Fen Lands and Low Grounds in the parish of Yaxley in the county of Huntingdon, and to remove certain doubts, and facilitate the execution of the said act.
6. An act for providing a covered Market in the borough of Scarborough in the county of York, for improving Approaches thereto, for removing the present Market, and for regulating the Market and Fairs in such borough.
7. An act for enabling the Company of Proprietors of the East London Waterworks to raise a further sum of money; and for other purposes.
8. An act to repeal the Batmaley Gas Act, and to make other provisions in lieu thereof, and to authorise the raising of a further sum of money.
9. An act to extend the Powers of an Act relating to the Yeovil Branch of the Bristol and

Exeter Railway, and to authorise a deviation in the line of such branch railway.

10. An act for the Improvement of the municipal borough of Macclesfield.

11. An act for providing a convenient Place or Fair Green, with proper Approaches thereto, for holding Fairs for the Sale of Cattle and other Animals, Wood, and Flax, in the province of Munster at or near the city of Limerick, and for regulating such Fairs.

12. An act for Improving, Diverting, and Maintaining, as Turnpike, the Road leading from Skipton to Craco in the parish of Burnsall, all in the West Riding of the county of York.

13. An act to authorise the Portsea Island Gaslight Company to raise a further sum of money.

14. An act for better lighting with Gas the borough of Derby and its neighbourhood, and for other purposes.

15. An act to repeal an Act for lighting with Gas the town of Belfast and the Suburbs thereof, and to make other provisions for that purpose.

16. An act to enable the Vale of Neath Railway Company to construct certain extensions of their lines of railway, and for other purposes.

17. An act to repeal an Act passed in the 6th year of the reign of King George the Fourth, intituled "An act for amending, improving, and maintaining the Road from Lockwood to Meltham, and the Branch of Road to Meltham Mills, all in the parish of Almondbury in the West Riding of the county of York," and for the widening and better maintaining and repairing the said road, and for other purposes.

18. An act for the Extension of the Boundaries of the municipal borough of Stockton in the county of Durham; and for transferring to the corporation of the said borough the Properties and Effects now vested in certain Commissioners having jurisdiction in the township of Stockton; and to provide for the better draining, cleansing, paving, watching, lighting, and otherwise improving the said borough.

19. An act for increasing the Capital of the Stockton and Darlington Railway Company, and for other purposes.

20. An act for the Establishment of a New Market in Barnstaple, and for the improvement and regulation of the existing Markets and Fairs therein.

21. An act to enable the Mayor, Aldermen, and Burgesses of the borough of Newport in the Isle of Wight to raise monies for the improvement of the Navigation of the river Medina, within the borough, and to alter and amend certain ancient Tolls and Duties payable to the said Mayor, Aldermen, and Burgesses.

22. An act for making a Canal from the Droitwich Canal at Droitwich in the county of Worcester, to join the Worcester and Birmingham Canal at or near Hanbury Wharf in the parish of Hanbury in the same county, and to be called "The Droitwich Junction Canal."

23. An act for supplying the Inhabitants of

the township of Ilkley in the West Riding of the county of York with water.

24. An act for reviving and continuing the Powers granted by "The Great Southern and Western Railway (Ireland) Extension, Portarlinton to Tullamore, Act, 1847," for the compulsory purchase of lands and completion of works.

25. An act for defining and regulating the capital of the Norfolk Railway Company, and for authorising arrangements with the Halesworth, Beccles, and Haddiscoe Railway Company, and for other purposes.

26. An act for enabling the Dudley Waterworks Company to raise a further sum of money, and for amending the provisions of the act relating to such company.

27. An act for better supplying with Water the boroughs of Sunderland and South Shields and other places in the county of Durham.

28. An act for establishing a Market and for providing a Market House and Slaughterhouse at Aberdare in the County of Glamorgan.

29. An act to amend an Act passed in the 7th year of the reign of her Majesty Queen Victoria, for inclosing Lands in the hamlet of Thetford in the Isle of Ely, and for draining certain Lands in the said hamlet and in other parishes in the said isle, so far as relates to such draining.

30. An act to enable the Eastern Counties Railway Company to construct a Railway to the river Nene or Wisbeach river below Wisbeach, in lieu of a portion of the railway authorised by "The Wisbeach, Saint Ives, and Cambridge Junction Railway Act, 1846," and to erect warehouses in connexion with such railway; and for other purposes.

31. An act to amend an Act passed in the 10th year of the reign of his Majesty King George the Fourth, intituled "An act to enable the Magistrates of the County Palatine of Chester to appoint Special High Constables for the several Hundreds or Divisions, and Assistant Petty Constables for the several townships of that County."

32. An act for paving, lighting, watching, draining, supplying with water, cleansing, regulating, and otherwise improving the township of Rhyl in the county of Flint, for making a Cemetery, and for establishing and regulating a Market and Market Places therein.

33. An act to enable the Eastern Counties Railway Company to construct Branch Railways to the East and West India Docks and Birmingham Junction Railway, and to enlarge and improve their Goods Station in the parish of Saint Matthew Bethnal Green; and for other purposes.

34. An act for the Dissolution of the "Union Arcade Company" (Glasgow), and for the abandonment of the undertaking.

35. An act to enable the Cork and Bandon Railway Company to raise further Capital, and to make arrangements with respect to their present Capital and Mortgage Debt; and for other purposes.

36. An act for enabling the York, Newcastle, and Berwick Railway Company to make a Deviation in the Line of their Thirsk and Malton Branch; and to enable the Malton and Driffield Junction Railway Company to subscribe towards and enter into agreements with respect to the said branch; and for other purposes.

37. An act for enabling the Malton and Driffield Junction Railway Company to subscribe towards the construction of the Thirsk and Malton Branch of the York, Newcastle, and Berwick Railway, and to make arrangements as to their Capital; and for other purposes.

38. An act to amend and extend the Provisions of the Act relating to "The London and Southampton Turnpike Road through Bishops Waltham," and to create a further term therein; and for other purposes.

39. An act to repeal the Act for more effectually repairing the Road leading from the High Street in the town of Arundel in the county of Sussex to the Turnpike Road leading from Petworth to Stopham on Fittleworth Common in the said county, and to make other provisions in lieu thereof.

40. An act for managing and repairing the Turnpike Road leading from the Eastern Side of a certain bridge called Spittle Hill Bridge over Moorgate Beck in the parish of Clarbrough in the county of Nottingham to Littleborough Ferry in the same county.

41. An act to amend the Acts relating to the Dundalk and Enniskillen Railway, and to extend the same from Ballybay to Enniskillen.

42. An act for incorporating the Deptford Gaslight and Coke Company.

43. An act to consolidate and amend the Acts relating to the Londonderry and Coleraine Railway Company; and to authorise the said company to contribute towards the construction of a new Bridge over the river Foyle and other works at Londonderry.

44. An act to consolidate and amend the Acts relating to the Londonderry and Enniskillen Railway Company, and to grant further powers to the said company for the extension and completion of the railway, and for other purposes.

45. An act to amend the Acts relating to the Forth and Clyde Navigation, to alter the place of Meeting, and to make further provision for the management of the affairs of the company of proprietors of the said Navigation.

46. An act to enable Cary Charles Elwes, Esq., to construct Waterworks for the Supply of Water to Glamford Briggs and the neighbourhood thereof in Lincolnshire.

47. An act for further amending the Local and Personal Acts, 9th & 10th of Victoria, c. 127, and 10th & 11th of Victoria, c. 261; relating to the Liverpool Corporation Waterworks; and for authorising Deviations, and the construction of Reservoirs; and for other purposes.

48. An act for incorporating the Aberdeen

Fire and Life Assurance Company, by the name of "The Scottish Provincial Assurance Company;" for enabling the said company to sue and to be sued, and to take and hold property; and for other purposes relating to the said company.

49. An act to enable the Mayor, Aldermen, and Burgesses of the borough of Sheffield to make certain Bridges over the river Don, Roads, Streets, and other works, all within the borough of Sheffield.

50. An act for better paving, draining, lighting, cleansing, supplying with water, regulating in regard to Markets, Interments, Hackney Carriages, and other purposes, and otherwise improving the borough of Cheltenham in the county of Gloucester.

51. An act to confirm an Agreement therein mentioned between the Eastern Counties Railway Company and the Newmarket Railway Company.

52. An act for repairing and managing the Roads leading from Porthdilllaen, by way of Tan-y-Graig, Pwllheli, Llanystymdwy, and Cerrig-y-Rhwyr, to or near Capel Cerrig, and from Pwllheli aforesaid, by way of Crugan, to the village of Llanbedrog, all in the county of Caernarvon.

53. An act for the better Regulation of the British Empire Mutual Life Assurance Company; for enabling the said company to take and hold property; and for other purposes relating to the said company.

54. An act for more effectually repairing the roads leading from Romsey to Stockbridge and Wallop, and other roads therein mentioned, in the county of Southampton.

55. An act for the establishment of a Turnpike Road from Southam to Kington, both in the county of Warwick.

56. An act for the Amalgamation of the Accidental Death Insurance Company and the Railway Assurance Company, and for enabling such amalgamated company to insure against death or other personal injury arising from accident or violence.

57. An act for amalgamating the East and West Yorkshire Junction Railway Company with the York and North Midland Railway Company, and for vesting the undertaking of the former company in that of the latter, and for other purposes.

58. An act to explain and amend the Act for supplying the burghs of Dumfries and Maxwelltown and Suburbs with Water.

59. An act for continuing the Term and amending and extending the Provisions of the Acts relating to the Haw Passage Bridge in the county of Gloucester.

60. An act to repeal the Acts relating to the Road from the town of Bedford in the county of Bedford to Kimbolton in the county of Huntingdon, and to substitute other provisions.

61. An act for enabling the Decade Railway Company to alter the line and Levels of part of their Railway, and to abandon parts thereof; for altering the Capital of the Company,

and repealing and amending the Act relating thereto; and for other purposes.

62. An act for constructing a Bridge across the river Kelvin near Hillhead, Glasgow, in the county of Lanark, with approaches and works.

63. An act for making a railway from High-bridge to Glastonbury in the county of Somerset, to be called "The Somerset Central Railway;" and for other purposes.

64. An act for regulating the Markets and Fairs and the Tolls and Customs of the borough of Athlone.

65. An act to enable the Newmarket Railway Company to make certain Alterations in the Levels of their Railway, and to construct a new Line of Railway between Newmarket in the county of Cambridge and Bury St. Edmunds in the county of Suffolk; to alter their Capital; and for other purposes.

66. An act for reclaiming from the Sea certain Lands on and near the Eastern and South-eastern Coast of Essex.

67. An act for supplying the borough of Lancaster in the County Palatine of Lancaster and adjacent Places with Water, and for other purposes.

68. An act for better paving, lighting, watching, cleansing, and otherwise improving the town of Buncora and certain parts of the township of Helton in the county of Chester, for regulating the Markets therein, and for other purposes.

69. An act for better lighting with Gas the town of Saint Helen's, the hamlet of Hardshaw-cum-Windle, and the several townships of Windle, Parr, Eccleston, and Sutton, all in the parish of Prescot in the County Palatine of Lancaster.

70. An act for better supplying with Water the town of Ulverston in the county of Lancaster, and for other purposes.

71. An act for continuing the Term and amending and extending the Provisions of the Act relating to the Abbey Tintern and Bigwear Roads.

72. An act for effecting Improvements in the city of London.

73. An act for making a Railway from the Middlesbrough and Redcar Railway near Middlesbrough to or near to Guisbrough, with branches to the Cleveland Hills, and for making arrangements with the Stockton and Darlington Railway Company.

74. An act for more effectually repairing the Road from Sharples to Houghton in the county of Lancaster.

75. An act for more effectually repairing the Road leading from North Shields to Morpeth Castle, and several branches of road communicating therewith, all in the county of Northumberland.

76. An act for supplying the Inhabitants of the town of Methyr Tydfil and adjacent places with water.

77. An act for the more easy Recovery of Small Debts and Demands within the city of London and the Liberties thereof.

78. An act for the Disruption of the Glasgow, Kilmarnock, and Ardrossan Railway Company, and the abandonment of their undertaking; and for other purposes.

79. An act to renew the Term and continue and enlarge the Powers of an Act passed in the 7th & 8th years of the reign of his Majesty King George the Fourth, intituled "An Act for more effectually repairing and improving the Road from Shillingford in the county of Oxford, through Wallingford and Pangbourne, to Reading in the county of Berks, and for repairing and maintaining a Bridge over the river Thames at or near Shillingford Ferry."

80. An act to enable the Portrush Harbour Company to improve the Navigation of the river Bann from the Salmon Leap at Castleroe above the town of Coleraine to the Sea, and remove the Bar and Ford at Bann Mouth, and to erect a Swivel Bridge at Coleraine, all in the county of Londonderry.

81. An act for maintaining the Road from Beach Down, near Battle, to Heathfield, and from the Railway Station near the town of Robertsbridge to Hood's Corner, all in the county of Sussex.

82. An act for granting further Powers to the London Gaslight Company; and for other purposes.

83. An act to empower the Manchester, Sheffield, and Lincolnshire Railway Company to raise a further sum of money; and to amend the acts relating to the said company.

84. An act to enable the Eastern Counties and London and Blackwall Railway Companies to construct a Railway with branches to Tilbury and Southend in the county of Essex, to provide a Steam Communication to Gravesend, and for other purposes.

85. An act for more effectually repairing the Road from Stockport in the County Palatine of Chester to Marple Bridge in the said county; and a Branch from the said Road to or near Thornset Gate in the county of Derby.

86. An act to repeal the Acts and parts of Acts relating to the Pedmore and Holly Hall Districts of Roads, and to substitute other provisions for the same.

87. An act to repeal the Act for making and maintaining a Turnpike Road from Stroud to Bisley, and to make other provisions in relation thereto.

88. An act to amend and extend the Provisions of the Macclesfield and Buxton Road Act, to create a Term of 21 years and for other purposes.

89. An act for maintaining the Turnpike Road, leading from Kirkby Stephen in the county of Westmorland into the Sedbergh and Kirkby Kendal Turnpike Road, and out of and from the same Turnpike Road to Hawes in the North Riding of the county of York, and a branch from Hawes aforesaid to the village of Gayle in the township of Hawes.

90. An act for maintaining in repair the Road leading from the Lord Nelson Public House upon the road between Burnley and

Colne in the township of Maraden in the parish of Whalley in the County Palatine of Lancaster to Gisburne in the West Riding of the county of York, and from thence to the road leading from Skipton to Settle at or near Long Preston in the said West Riding in the county of York.

[To be continued.]

## SELECTIONS FROM CORRESPONDENCE.

### CHANCERY PRACTICE.—RECORD OFFICE.

To the Editor of the Legal Observer.

SIR,—One of the inconveniences to which solicitors are to be henceforth subjected through the operation of the recent changes in Chancery practice, is the following :—

Formerly the clerk of the Subpœna Office always accepted an affidavit of the clerk of a solicitor as sufficient authority for issuing a distringas. Now, one at least, if not all of the record clerks, declines passing any affidavit but the solicitors' or the clients',—thus taking upon himself to construe the order more strictly than we have been used to, and than was, as I believe, intended.

It would be well that your readers should know this, as it will save many of them from the loss and annoyance I have just undergone by having my affidavit rejected after it was sworn, and the 4s. stamp thereby spoiled.

T. E. R.

### SPECIAL PLEADERS.

I have always thought it was very beneficial for the plaintiff's attorney to consult the special pleader at the beginning of the action, if of any importance, and also just before trial. As to the first, he not only gives his opinion

on the case, but may prevent an unnecessary action, and he may suggest what may be of great utility. Without such advice, the plaintiff may get wrong in the beginning and have a bad end.

It was the opinion of Mr. Seth Thompson, an able special pleader of the olden time, that it was very desirable to have the pleader's opinion just before trial, he knowing the cause from the beginning.

The Judges will find, to their cost, that special pleading is not abolished.

AN OLD PLEADER.

## NOTES OF THE WEEK.

### QUEEN'S BENCH.

THE Court will take the New Trial Paper on Special Paper and Crown Paper days, if those papers fail.

### EXCHEQUER OF PLEAS.

The 2nd Sitting in London will be on Monday, the 22nd November, and not on Thursday, the 18th, the funeral of the late Duke of Wellington taking place on the last-mentioned day.

### EXCHEQUER CHAMBER.

The Court will not sit to hear Arguments in Error from the Court of Queen's Bench on the 26th and 27th November, the days originally fixed, but will sit on such days as may be appointed.

### SOLICITORS ELECTED AS MAYORS.

Oxford.—Mr. John Crews Dudley.

Cambridge.—Mr. Henry Hemington Harris.

Plymouth.—Mr. Herbert Mends Gibson.

Leeds.—Mr. John Hope Shaw.

Portsmouth.—Mr. George Cornelius Stigant.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

Nov. 12.—*Harrison v. Round*—Appeal from the late Vice-Chancellor Parker dismissed, without costs.

—12.—*In re Wilson*—Order for payment of balance of lunatic's estate into Court and for accounts of dealings with the same.

—12, 13.—*In re Thrapp*—Master's report confirmed.

—13.—*In re John Smith, of Birmingham*—Order for restoration to roll at expiration of six months, upon payment of costs.

—15.—*Hawkes v. Eastern Counties' Railway Company*—Appeal from Vice-Chancellor Knight Bruce dismissed, with costs.

—15.—*Seagrave v. Pope*—Re-hearing resumed.

### Lords Justices.

*Blakeney v. Dufaur*. Nov. 11, 1852.

SECURITY FOR COSTS.—RESIDENCE AT JERSEY.

Held, affirming with costs the decision of the Master of the Rolls, that a plaintiff, who had gone to Jersey in May last, and was not shown to intend to return, was liable to give security for costs.

This was an appeal from the decision of the Master of the Rolls directing the plaintiff to give security for costs, upon his having gone in May last to Jersey, and its not appearing he intended to return.

*Elderton* in support; *Smythe*, contra.

The Lords Justices said, the plaintiff was clearly within the rule which required security for costs to be given on account of his being out of the jurisdiction, and dismissed the appeal with costs.

*Cator v. Reeves.* Nov. 12, 1852.

FORECLOSURE SUIT.—ORDER FOR SALE AND PAYMENT INTO COURT.—PAYMENT AMONG INCUMBRANCERS.

*Is a foreclosure suit which had stood over for the parties to come to some arrangement, an order was made upon no arrangement being come to for a sale, under the 15 & 16 Vict. c. 86. s. 48, and for payment of the proceeds into Court, and application thereof, according to the priorities to be ascertained of the incumbrancers.*

It appeared that the defendants had mortgaged certain freehold and leasehold property and a policy of insurance to the plaintiff, and then mortgaged to other parties the equity of redemption. This suit was now instituted upon the mortgagors becoming bankrupt to foreclose, and it had been directed to stand over for some arrangement.

Dauney now applied for an order under the 15 & 16 Vict. c. 86, s. 48,<sup>1</sup> upon no such arrangement having been come to; *Murray* for the subsequent incumbrancers; *Karslake* for the mortgagors' assignees.

The Lords Justices directed the estates and policy to be sold, and the proceeds to be paid into Court to two accounts, and to be applied as ascertained to be due to the plaintiff and the other incumbrancers, according to their several priorities. The matter to go back to Vice-Chancellor Stuart's Court.

*Lowes v. Lowes.* Nov. 15, 1852.

IMPROVEMENT OF JURISDICTION IN EQUITY ACT.—CREDITOR.—ORDER TO REVIVE.

Held, reversing the decision of Vice-Chancellor Stuart, that a party who had been reported by the Master to be a creditor under an administration decree was entitled under the 15 & 16 Vict. c. 86, s. 52, where the suit had abated, to an order to revive, without being required to file a bill of revivor or of supplement.

In this suit for the administration of the estate of a testator, which had been continued by supplemental bills, a decree had been made for a sale, but no proceedings had been taken since 1848.

R. W. E. Forster now applied, upon appeal from Vice-Chancellor Stuart, on behalf of Eleanor Kemp, a party reported by the Master to be a creditor, who was desirous to prosecute

<sup>1</sup> Which enacts, that "it shall be lawful for the Court in any suit for the foreclosure of the equity of redemption in any mortgaged property, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor, or any person claiming under them respectively, to direct a sale of such property, instead of a foreclosure of such equity of redemption, on such terms as the Court may think fit to direct, and if the Court shall so think fit, without previously determining the priorities of incumbrances, or giving the usual or any time to redeem."

the suit, for an order under the 15 & 16 Vict. c. 86, s. 52, without filing a bill of revivor or of supplement.

The Lords Justices said, that although the provision of the Act did not strictly apply to the present case, yet it was clearly within the equity of the Statute, and the appeal was therefore allowed.

Nov. 10.—*Ex parte Oldfield, in re Oldfield*—On appeal from Mr. Commissioner Goulburn, adjudication confirmed; with leave to proceed at law.

— 11.—*In re Monmouthshire and Glamorganshire Banking Company, ex parte Cape's executors*—Application to be made to Lord Chancellor to hear this case alone or in full Court.

— 11.—*Shrewsbury and Birmingham Railway Company v. Stour Valley Railway Company*—Stand over to Dec. 8.

— 13.—*Blann v. Bell*—Decree affirmed of late Vice-Chancellor Parker.

— 13.—*Martin v. Pycroft*—Part heard.

### Master of the Rolls.

*Morris v. Hannam.* Nov. 11, 1852.

PRODUCTION OF DOCUMENTS ON ADMISSIONS IN ANSWER.—MOTION IN COURT.—PRACTICE.

*An application for the production of documents upon admissions made in the defendant's answer should be made to the Court in the first instance upon notice, and not at Chambers.*

This was a motion for the production of documents admitted by the defendant in his answer to be in his possession. It appeared it was a renewed motion on notice given for the first day of Term.

*Billon* in support.

The Master of the Rolls said, that as this was an application founded upon the admissions made by the defendant in his answer, no affidavit in support was requisite, and that the motion might properly, notwithstanding the new regulations as to the practice at Chambers, be made to the Court in the first instance, upon notice. And that, therefore, a new notice of motion must be served.

*Bell v. Carter.* Nov. 11, 1852.

PROOF OF DEED BY AFFIDAVIT.—PRACTICE.

*Leave given on motion to prove a deed by affidavit instead of viva voce.*

In this case the Master of the Rolls, upon the motion of J. V. Prior, gave leave to take the evidence to prove a deed by affidavit instead of *viva voce* under the practice.

Nov. 10.—*Cowley v. Watts*—Exceptions overruled to answer to amended bill for insufficiency, with costs.

— 10.—*Duncan v. Ross*—Part heard.

— 11.—*Sanders v. Rodway*—Injunction granted.

Nov. 11.—*Carew v. Yates*—Injunction granted.

—12.—*Rhodes v. Buckland*—Injunction granted to restrain first mortgagee from selling under power of sale, until the right of the second to redeem was determined.

—12.—*In re Moylan*—Master's report to be amended.

—13.—*Brassey v. Chalmers*—Judgment on special case.

—13.—*Stanfield v. Hobson*—Decree against mortgagees in possession, and reference.

—13.—*Busbury v. Busbury*—Stand over for production of evidence at Chambers as to marriage, &c., of ward of Court.

—13.—*Overbury v. Trale*—Decree for account.

—13.—*Trustees of Birmingham Docks v. Chester and Shrewsbury Railway Company*—Interim injunction granted.

—10, 15.—*Llewellyn v. Pace*—Injunction granted.

—15.—*Shrewsbury and Birmingham Railway Company and others v. London and North Western Railway Company*—Part heard.

#### Vice-Chancellor Turner.

*Davenport v. Davenport.* Nov. 11, 1852.

PURCHASER ACCEPTING TITLE.—PAYMENT OF MONEY INTO COURT.—PRACTICE.

*The application on behalf of a purchaser, who has accepted the title, to pay the purchase-money into Court, should be made at Chambers, and not in open Court.*

The Vice-Chancellor, in this motion for the payment of money into Court by a purchaser, who had accepted the title, said, that in order to save expense, the application would have to be made at Chambers.

IV. M. James appeared in support.

*Thompson v. Teulon.* Nov. 11, 1852.

PRODUCTION OF DOCUMENTS ARRANGED UPON.—ORDER FOR.—PRACTICE.

*An order for the production of documents as to which the parties have arranged, is to be obtained at Chambers, and where any difficulty arises it will be adjourned into open Court.*

This was a motion for the production of documents, as to which the parties had come to an arrangement.

Sir W. Page Wood in support.

The Vice-Chancellor said, that where there was no dispute as to the production, the application should originate at Chambers, the party summoned giving in a list on affidavit, by which the expense of moving would be saved; but if there appeared any difficulty as to the production, the motion would be adjourned for argument in open Court.

Nov. 10, 11.—*Young v. Hodges*—Cur. ad. vult.

Nov. 11.—*Parnell v. Vanshall Bridge Company*—Stand over.

—11.—*Drake v. Terrell*—Injunction refused.

—12.—*Wilkinson v. Stringer*—Claim dismissed for specific performance of contract.

—13.—*Lambert v. Lomas*—Leave to file interrogatories.

—13.—*Midland Railway Company v. Browne*—Compromise agreed to.

—13.—*In re Rye's Settlement*—Order on petition for payment of moneys out of Court.

—13.—*Lewis v. South Wales Railway Company*—Cur. ad. vult.

—15.—*Barham v. Earl of Clarendon*—Part heard.

#### Vice-Chancellor Kindersley.

*Staines v. Rudlin.* Nov. 6, 1852.

FORECLOSURE CLAIM.—SALE AND PAYMENT INTO COURT.

*On foreclosure claim filed July 15, order made for sale under 15 & 16 Vict. c. 86, s. 48, for sale and payment into Court and distribution in accordance with certificate of Judge's clerk.*

*Drewry* applied in this foreclosure claim, which was filed on July 15, for an order for a sale under the 15 & 16 Vict. c. 86, s. 48.

*Shebbeare* for the defendant.

The Vice-Chancellor directed the account to be taken at Chambers, and for a sale and payment of the proceeds into Court, if the amount were not paid in one month after the certificate of the Judge's clerk.

*In re Stringer's Estate.* Nov. 12, 1852.

TRUSTEES' ACT, 1850.—VESTING ORDER.—PETITION.—PRACTICE.

*One of the co-heirs of a deceased mortgagee was in Australia—a petition for a vesting order, under the 13 & 14 Vict. c. 60, was directed to stand over for proof of the descent of the remainder of the legal estate on summons before the Judge's clerk.*

This was a petition for a vesting order, under the 13 & 14 Vict. c. 60—one of the co-heirs of the deceased mortgagee was in Australia, and could not join in the conveyance.

J. J. Humphreys in support.

The Vice-Chancellor directed the petition to stand over in order that the descent, &c., of the remainder of the legal estate might be proved on summons before the chief clerk at Chambers.

Nov. 10, 12.—*Petre v. Petre*—Cur. ad. vult.

—11.—*Pearce v. Wycombe and Maidenhead Railway Company*—Reference, by consent, to Board of Trade.

—11.—*In re Dover, Deal, and Cinque Ports Railway Company, ex parte Beardshaw*—Name removed from list of contributories.

—13.—*In re London and Birmingham Rail-*

*way Company, ex parte Dean, &c., of Christchurch, Oxford*—Order for payment of money out of Court paid for lands.

Nov. 13.—*Groves v. Lane*—General administration to be taken out.

— 15.—*In re Ground's Estate*—Order for payment of purchase-money of copyhold lands to enfranchise remainder.

### Vice-Chancellor Stuart.

Nov. 10.—*Jawrey v. Rumney*—Legacies held to be payable out of stock standing in names of trustees.

— 10, 11.—*Ostell v. Lepage*—Order for stay of proceedings, with liberty to apply.

— 11.—*M'Intosh v. Great Western Railway Company*—Motion granted on behalf of defendants, for evidence to be taken upon affidavit, if parties disagreed, or orally by consent under the 15 & 16 Vict. c. 86.

— 12.—*In re Pennant and Craigwen Consolidated Lead Mining Company, ex parte Penn*—Name to be removed from the list of contributories.

— 12.—*In re Liverpool Plate Glass Company, ex parte Kurtz*—Stand over.

— 13.—*In re Chamberlayne's Charity*—Stand over.

— 13.—*In re Birmingham, Wolverhampton, and Dudley Railway Company, ex parte James*—Stand over.

— 15.—*In re Universal Salvage Company, ex parte Winkrop*—Motion refused, with costs, to reverse Master's disallowance of claim.

— 15.—*In re Worcester Corn Exchange Company, ex parte Wood*—Master's decision affirmed, with costs, as to liability as contributory.

— 15.—*In re North of England Joint-Stock Banking Company, ex parte Bartram and another*—Motion refused, with costs, to vary order for call.

### Court of Queen's Bench.

*Farquhar and others v. Willis and another.*  
Nov. 15, 1852.

ACTION ON BILL OF EXCHANGE.—NOTICE OF DISHONOUR.—SUFFICIENCY.

A notice of dishonour of a bill of exchange was as follows: "A discounted bill, &c., unpaid, on Mr. J. M., lies due at Messrs. F. & Co. Please send between three and five o'clock. Nothing can be taken in payment but bank notes or money." Held, discharging a rule nisi to set aside the verdict for the plaintiff and for a new trial, that the notice was sufficient.

This was a rule nisi to set aside the verdict for the plaintiff, and for a new trial of this action, which was brought on four bills of exchange, endorsed by the defendant White in the name of himself and partner, to the plaintiff. The defendants averred in their defence, and pleaded inter alia insufficiency of notice of dishonour. It appeared the notice was in the following form: "A discounted bill, &c.,

"unpaid, on Mr. Joseph Miles, lies due at Messrs. Farquhar & Co. Please send between three and five o'clock. Nothing can be taken in payment but bank notes or money." On the trial before Mr. Justice Wightman, the plaintiffs obtained a verdict.

The Court held, that the notice of dishonour was sufficient, and discharged the rule accordingly.

Nov. 10.—*Henniker v. Henniker*—Cur. ad. vult.

— 11.—*In re Wilson v. Simpson*—Rule nisi for new trial, or for appointment of arbitrator.

— 11.—*In re Money and another*—Matter to be heard by Mr. Justice Erle at Chambers.

— 11.—*Regina v. North and South Shields Ferry Company*—On appeal, rate for relief of the poor reduced.

— 11.—*Gregory v. Cottrell and others*—Rule nisi for new trial.

— 12.—*Ballion v. Herne Bay Pier Company*—Judgment for plaintiff.

— 13.—*Mayor of Berwick v. Oswald*—Cur. ad. vult.

— 13.—*Pigott v. Jackson*—Rule nisi to reverse Judge's order setting aside execution.

— 15.—*Regina v. Mayor and Assessors of Harwich*—Rule nisi for mandamus on defendants to hear objection to voter.

— 15.—*Edwards v. Lowndes and others*—Cur. ad. vult.

— 15.—*Robinson v. Shaw*—Rule nisi to set aside award.

— 15.—*Trustees of River Lea v. New River Company*—Special case for opinion of the Court.

### Queen's Bench Practice Court.

Nov. 10.—*Regina v. Mullock*—Rule nisi for criminal information for libel.

— 11.—*Regina v. Judge of — County Court*—Rule refused for criminal information for misconduct.

— 11.—*In re Harrison and another*—Rule nisi on attorneys to deliver copy bill of costs pursuant to undertaking.

— 12.—*Ex parte Craven*—Rule absolute for review of taxation.

— 12.—*Regina v. Potts*—Rule nisi for criminal information for libel.

### Court of Common Pleas.

*Gapp v. Robinson.* Nov. 6, 1852.

COMMON LAW PROCEDURE ACT.—ALIAS WRITS.—PRACTICE.

A writ, which issued on June 8 and expired on Oct. 8, was renewable by alias writ under the 2 Wm. 4. c. 39, s. 10, until Nov. 8, to prevent the operation of the Statute of limitations: Held, that the 15 & 16 Vict. c. 76, s. 10, did not affect the practice in regard thereto.

The writ of summons in this action had issued on June 8 last, and expired on Oct. 8, and in accordance with the former practice



under the 2 Wm. 4, c. 39, s. 10, the plaintiff might issue an alias writ before Nov. 8, in order to prevent the operation of the Statute of Limitations.

*Lush* now applied as to the course to be pursued, and referred to the 15 & 16 Vict. c. 76, s. 10.<sup>1</sup>

The Court said, the proper course would be to issue an alias writ under the former practice, as the case was within the exception of the 10th section of the new Act.

Nov. 10.—*Leroux v. Brown*—Rule absolute to enter a nonsuit.

—12.—*Ford, appellant; Smerley, respondent*—Decision affirmed, with costs.

—12.—*Hamilton, appellant; Bass, respondent*—Appeal dismissed from revising barrister.

—12.—*Collins, appellant; Town Clerk of Tewkesbury, respondent*—Decision affirmed.

—12.—*Lambert, appellant; Overseers of New Sarum, respondents*—Appeal dismissed, with costs.

—13.—*In re Storey*—Rule refused for prohibition.

—15.—*Arnell v. London and North Western Railway Company*—On special case, judgment for plaintiff.

#### Court of Exchequer.

*Morgan v. Jones.* Nov. 6, 1852.

COMMON LAW PROCEDURE ACT.—RULE AS IN CASE OF NONSUIT.—PRACTICE.

Held, that the provisions of the 15 & 16 Vict. c. 76, s. 100, have done away with rules as in case of nonsuit, in actions commenced before that Act came into operation, except where proceedings to obtain such rules, under 14 Geo. 2, c. 17, have been instituted.

This was a motion for judgment as in case of nonsuit in this action, upon the plaintiff not having proceeded to trial, pursuant to notice given for the Summer Assizes.

*F. Bailey* in support, cited 15 & 16 Vict. c. 76, s. 100.<sup>2</sup>

<sup>1</sup> Which enacts, that "from the time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the 2 Wm. 4, c. 39, intituled 'An Act for uniformity of process in personal actions in his Majesty's Courts of Law at Westminster,' as relates to the duration of writs, and to alias and pluries writs, and to the proceedings necessary for making the first writ in any action available to prevent the operation of any statute whereby the time for the commencement of any action may be limited, shall be repealed, except so far as may be necessary for supporting any writs that have been issued before the commencement of this Act, and any proceedings taken or to be taken thereon."

<sup>2</sup> Which enacts, that "the Act passed in the 14 Geo. 2, c. 17, intituled 'An Act to prevent inconveniences arising from delays of causes after issue joined,' so far as the same relates to

The Court said, that the new Act put an end to this form of judgment, except where the provisions of the 14 Geo. 2, c. 17, had been acted on, and refused the rule accordingly.

*Penhorne v. Southcoat.* Nov. 15, 1852.

COMMON LAW PROCEDURE ACT.—SPECIAL DEMURRER TO PLEADING.

*The abolition of special demurrers to pleadings by the 15 & 16 Vict. c. 76, s. 51, only applies to future pleadings.*

*But leave was given to the defendant to amend his plea which had been specially demurred to.*

To this action, the plaintiff had demurred specially to the defendant's plea.

*T. Jones* in support of the demurrer.

*Macnamara* argued the defendant was entitled to judgment, and referred to the 15 & 16 Vict. c. 76, s. 51.<sup>1</sup>

The Court said, that the Act, so far as this section was concerned, was not retrospective, but ought to be confined to the cases of pleadings after it came into operation. It must be construed according to the general maxim applicable to statutes, *nova constitutio futuris formam imponere debet non prateritis*, unless there were a contrary intention indicated by the text. The plaintiff was therefore entitled to avail himself of his demurrer; but the defendant might have leave to amend, if he thought fit.

Nov. 10.—*Taylor v. Loft*—*Cur. ad. vult.*

—10.—*Dublin and Wicklow Railway Company v. Black*—Leave to amend plea within a week, or judgment for plaintiff.

—12, 13.—*Lumley v. Gye*—Rule nisi for leave to demur and plead several matters to declaration.

—13.—*Lines v. Lord C. Russell*—Rule discharged for new trial.

—13.—*Shaw v. Bank of England*—Rule nisi for inspection of alleged infringement of patent.

#### Exchequer Chamber.

Nov. 9.—*Earl of Stamford and Warrington v. Lowndes*—On error from Court of Queen's Bench, reference to arbitration.

—11.—*Hooper v. Lane*—Exceptions to ruling of Lord Denman overruled.

—13.—*Regina v. Dale*—*Cur. ad. vult.*

—13.—*Regina v. Povey*—Conviction reversed.

judgment as in the case of a nonsuit, shall be and the same is hereby repealed, except as to proceedings taken or commenced thereupon before the commencement of this Act."

<sup>1</sup> Which enacts, that "no pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer."

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, NOVEMBER 27, 1852.  
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## PROGRESS OF LEGAL LEGISLATION.

### LORD BROUGHAM'S BILLS.

THE great length, as well as the surpassing importance, of the statement made by the Lord Chancellor, upon announcing the measures of legal improvement intended to be proposed by Government, caused us temporarily to overlook other measures, introduced by members of either House, not officially connected with the Government.

Lord Brougham has evinced his wonted activity at the commencement of the Session, by laying on the table of the House of Lords no less than four Bills affecting, more or less, the administration of the Law. Of the four Bills, however, three,—namely, *the County Courts Equitable Jurisdiction Bill*, *the County Courts further Extension Bill*, and *the District Courts of Bankruptcy Abolition Bill*,—were submitted to Parliament during the last Session. As these measures did not obtain any general or enthusiastic support from the last Parliament, and are, to some extent, at variance with the plans of law reform announced by the Lord Chancellor, and adopted by the Government, we venture to hope, that Lord Brougham will think he has discharged his duty in bringing these Bills again before Parliament, without seeking to press them forward. The eulogistic spirit in which the Chancellor's statement was hailed by Lord Brougham renders it improbable that the Government scheme will meet opposition or interruption from that quarter. The fourth Bill introduced by Lord Brougham, relates to *the Law of Evidence and Procedure*. Its provisions were thus described by the noble and learned lord before presenting it to the House of Lords:—

“The Bill for the further Improvement of the Law of Evidence and Procedure, would contain provisions, making the evidence of husband and wife competent and compellable on every occasion, except in criminal cases and adultery, and making the wife's evidence not compellable for matters communicated from one to another during coverture. A second provision would be introduced for regulating the payment of money into Court, and making the payment of money an admission of the cause of action. A third would be for regulating the mode of examination and cross-examination of witnesses with respect to all collateral issues. A fourth would regulate the examination with respect to the adverse witnesses on collateral issues. A fifth would be for setting the law right, partly by enactment and partly by declaration, with respect to the rule in what was called the Queen's case, where the grounds of examination and cross-examination are contained in a written document. The next would be for depriving witnesses of the protection now given them by the law against answering questions, the answers to which might tend to criminate themselves, under proper restrictions, and preventing any question they might answer, or any answers they might give, from being given in evidence against themselves in any prosecution. And next with regard to procedure, to put the Crown and the subject on the same footing in all respects; secondly, for giving where a party had been acquitted, whether the procedure were for penalties or of a criminal nature, a right to his costs at the expense of the Crown, subject to the discretion of the Court; and lastly, as regarded the subject of procedure, to facilitate, under the authority of the Court and at its discretion, the changing of the venue. He (Lord Brougham) had great doubts whether he should not go a step further, following the result of the experience of the County Courts, where it had been found that not three in a hundred of the cases put down were tried by a jury, because the parties both preferred to have the opinion of the Judge to the opinion of the Jury. He had great doubts whether he should not also have added a provision making it, in all cases of debt and contract, not of tort, op-

tional with the parties to have their cause tried by a jury."

The Bill thus described by Lord Brougham raises many questions, the importance of which can hardly be exaggerated, but which will be more advantageously discussed when the Bill is in print, and an opportunity afforded for considering the precise terms in which the proposed changes are embodied.

We are informed by those who have the best opportunity of acquaintance with the fact, that not only Lord Brougham's but Lord St. Leonards', statement on Legal Reforms in the House of Lords, was misunderstood in several important particulars, and therefore inaccurately reported in the newspapers,—a circumstance furnishing an additional reason for postponing discussion upon the proposed measures.

## ASSIMILATION OF MERCANTILE LAW.

### CONFERENCE OF DEPUTIES.

THE discrepancies existing in the law which prevails in the three divisions of the United Kingdom, has for some time past attracted the attention of commercial men, who conceive that mercantile transactions are impeded, and legitimate trading disadvantageously checked, by the feeling of uncertainty and insecurity produced by such anomalies. The increased dissatisfaction arising from the continuance of such a state of things, and the prevalence of an impression that an adequate remedy may be devised for the evil complained of, has led to the very unusual occurrence in the history of Law Reform, of a *conference*, held during the last week at the rooms of the Law Amendment Society, which was attended by deputies from various commercial bodies throughout the kingdom, and the representatives of certain of the Law Societies, and at which the subjoined resolutions were unanimously adopted:—

"That the Mercantile Laws of England, Ireland, and Scotland are scattered and disconnected, and in many instances dissimilar and even antagonistic; a state of things tending greatly to restrict and embarrass commerce, by producing uncertainty, perplexity and delay.

"That it is highly desirable that a well-digested and well-arranged body of Mercantile Law should be framed and established for the whole of the three kingdoms.

"That, dismissing all local and even national prejudices, the assimilation and improvement of the Mercantile Laws of the three kingdoms, and the improvement and, where re-

quisite, the assimilation of the procedure, should be effected by selecting those principles and rules, wherever they may be found, which shall be deemed the best and most beneficial to the commercial classes and to the community at large; and that to this end it is necessary carefully to examine the Mercantile Laws and to have recourse to the experience of other countries.

"That it is desirable that this assimilation and improvement should be brought about by a general revision, amendment, and consolidation of the different branches of the Mercantile Law, taken successively; but that while these larger measures are proceeding, much immediate relief might be afforded by a series of single acts, addressed to the more pressing and grievous evils, which acts, by proper arrangements, might be made subservient to the ultimate object.

"That while this work is going forward it is important that no new measures of Mercantile Law should be introduced into Parliament but such as may apply generally to the three kingdoms, or serve as steps towards a general assimilation.

"That the president, vice-presidents, and council of the Law Amendment Society, and the following gentlemen,—Lord Wharnccliffe, Lord Monteagle, Lord Ashburton, Viscount Goderich, &c., with power to add to their number, be appointed a committee to represent the views of this conference to her Majesty's Government, and to take such other measures as may from time to time appear necessary for carrying these views into effect.

"That this meeting recognises with pleasure and approval the efforts which have been made by other bodies besides the Law Amendment Society for the assimilation and improvement of the Mercantile Laws of the three kingdoms, but would suggest for the consideration of these bodies, whether their future efforts would not be more efficient if made in connexion with those of the above-mentioned committee.

"That a commission, consisting of members of both Houses of Parliament and members of the legal and commercial professions, appears the most efficient means of obtaining the desired result."

In a recent Number, attention was directed to the startling deficiencies of the system established in Scotland for administering the estates of traders becoming bankrupt, and to the zealous and business-like efforts about to be made to remedy that evil, and give increased security to creditors, by assimilating the law and procedure of Scotland to that prevailing in England in cases of bankruptcy. We are given to understand that a Bill is in course of preparation and will shortly be submitted to Parliament, with the exclusive object of effecting this practical and most useful reform. It is obvious that the success of

the Bankruptcy Assimilation Bill, will in no respect interfere with, and therefore need not be delayed until the far more comprehensive scheme, recommended in the above resolutions of "the Conference," has arrived at maturity. It was correctly stated by Mr. Baines, the able and learned member for Leeds, at the meeting in Regent Street, that the Law of England differs from that of Scotland, not only in cases of bankruptcy and insolvency, but "with respect to the sale of goods—with respect to the time and manner of passing the property on sale—the manner in which the sale itself was to be established in a Court of Justice—the warranty on a sale of goods—lien—stoppage *in transitu*—partnerships, including joint-stock companies—the Statutes of Limitations—set-off, and bills of exchange." We have no doubt that this enumeration might be infinitely extended, and that the dissimilarity existing in the system of procedure in the two countries, if it were clearly explained, would be found even more remarkable than the differences which prevail in the law. That it is desirable to establish a uniform system of Mercantile Law in the three kingdoms, and that by retaining what experience has proved to be useful in each country, and rejecting what is anomalous and objectionable, the foundation of such a system may be laid by legislative enactments, we see no reason to doubt. But the magnitude of the projected change, and its difficulties, *should not be underrated!* It is precisely one of those instances in which it is hardly possible to conceive that caution could be carried to excess, because precipitancy and indiscreet zeal may produce incalculable injury. Although preliminary discussion and inquiry may be usefully encouraged and directed by the important and influential bodies represented at the conference, yet it is abundantly clear, that when the public mind is prepared for the change, the proper quarter to look to in order to carry it out is the Government. A measure of such extent and importance could only be conducted through Parliament, and ought to be framed with the aid of the resources and upon the responsibility of the Government. We doubt not that in hazarding these observations we are exposing ourselves to the rebuke, that we are throwing "a damper" upon the movement, and not "up to the mark" as Law Reformers. Similar imputations have been thrown upon Mr. Lavie, the Delegate of the Incorporated Law Society, because he

ventured, at the Conference Meeting, to confess a leaning in favour of the principles of the Common Law of England, and expressed a doubt whether those principles could be advantageously codified. Mr. Lavie may be right or wrong in entertaining a preference for principles which have miraculously accommodated themselves to the exigencies of the greatest commercial country in the world, and with his experience and knowledge of business, may have over-estimated the dangers of reducing those principles to exact definitions and inserting them in a code; but we should augur ill of the success, and think lightly of the practical character of any "Conference," that disregarded such suggestions as those that fell from Mr. Lavie, or overlooked the difficulties at which he hinted. The movement for assimilating the Commercial Laws of the United Kingdom is entitled to, and shall receive, our humble support, but we caution those who are ambitious to assume its guidance, that it can and ought only to be successful when it has secured the approval of the whole community.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### BILLS OF EXCHANGE AND NOTES.

16 VICT. C. 1.

Provisions of 7 & 8 G. 4, c. 15, and 6 & 7 W. 4, c. 58, with respect to bills of exchange and promissory notes payable in the metropolis on fast days, &c., to extend to bills, &c., payable on the 18th November, 1852; s. 1.

Notarial charges occasioned by this Act not to be thrown on the acceptors; s. 2.

Metropolis defined for purposes of this Act; s. 3.

The following are the sections of the Act:—

An Act to make Provision concerning Bills of Exchange and Promissory Notes payable in the Metropolis on the Day appointed for the Funeral of Arthur late Duke of Wellington.

[17th November, 1852.]

Whereas her Majesty, in testimony of the pre-eminent services of Arthur late Duke of Wellington, has been pleased to direct his body to be interred in the Cathedral Church of St. Paul, with solemnities suitable to the occasion, and the 18th day of November has been appointed for such funeral: Be it enacted—

1. All the provisions of an Act passed in the Session holden in the 7 & 8 Geo. 4, inti-

tuled "An Act for declaring the Law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day," and of an Act passed in the Session holden in the 6 & 7 Wm. 4, intituled "An Act for declaring the Law as to the Day on which it is requisite to present for payment to the Acceptors or Acceptor supra Protest for Honour, or to the Referees or Referee in case of Need, Bills of Exchange which had been dishonoured," having reference to days appointed by Royal Proclamation as days of solemn fast or days of thanksgiving, shall, as respects all bills of exchange and promissory notes payable in the metropolis, or which should be presented for payment in the metropolis, extend and be applicable to the 18th day of November, 1852, as if the said 18th day of November were a day appointed by her Majesty's Proclamation for a day of solemn fast or for a day of thanksgiving.

2. Provided always, That where any bill of exchange or promissory note shall by virtue of this Act be presented for payment on the day preceding the said 18th day of November, and the same shall be paid before two of the clock in the afternoon of the day following the said 18th day of November, no notarial or other charges by reason of non-payment of such bill or note shall be payable by or chargeable against the person paying such bill or note.

3. For the purposes of this Act the metropolis shall mean and include the cities of London and Westminster, and all places and parts of places within 10 miles of the Cathedral Church of St. Paul, measured in a straight line on the horizontal plane, the distance to be determined by the maps drawn and published under the authority and direction of the principal officers of her Majesty's Ordinance.

## NOTICES OF NEW BOOKS.

*A Practical Treatise of the Law of Evidence.* By THOMAS STARKIE, Esq., of the Inner Temple, one of her Majesty's Counsel. Fourth Edition. By GEORGE MORLEY DOWDESWELL, and JOHN GEORGE MALCOLM, Esqrs., of the Inner Temple, Barristers-at-Law. London: Stevens & Norton.

At a time when many changes in the Law of Evidence have been introduced, and when, in the opinion of many, further changes are desirable, it is necessary to know what the law actually is, and what its principles ought to be. It is very important to the student, the practitioner, and the legislator to have some book to consult, where he may find the general principles investigated from which alone the law can properly be derived—those principles expanded and ap-

plied to actual practice, and the modifications of that practice shown as it has been affected by recent statutes. For at the present time, it is not sufficient for the lawyer to be dexterous in pointing to a case, according to the analogy of which he may advise his client with safety. The Statutes of the last few years have broken in upon those analogies, and although they have been very far from destroying them, they have introduced other elements to be considered together with them, and continually require the accurate lawyer to recur to the most general principles, upon some of which those cases were decided, and to carry out more perfectly others for which those Statutes have been passed. Nor is it for such purposes alone that an acquaintance with these *leges legum* is necessary. The lawyer must frequently consider and advise upon the policy and effect of projected alterations. Alterations are easily made, but they are not carried into practice easily, unless they are consistent with those parts of the law which are not altered; and they cannot be carried into practice beneficially, unless they are drawn from those general principles of law which are founded in human nature and general convenience. A knowledge, therefore, of these general principles of law, or of legislation, which was always desirable for the lawyer, is now peculiarly necessary.

It may be safely said, that Mr. Starkie's work is the only one in the English language which is at once founded on ample induction of these great principles, and amplifies and applies them to all the ramifications of practice, which experience has shown to arise in the judicial investigation of disputed facts. The profound and elegant first part of the first volume is indeed singular in its object, as well as its execution, in showing the derivation of the practical rules from their source in human nature. It is also the only work of which a new edition has been brought out at such a time as to render it possible, that it should apply to practice, with any degree of consideration and accuracy, the modern changes in the law; for Mr. Phillips' work was published before those changes had been illustrated by decisions, and the very able work of Mr. Pitt Taylor, before the more recent of those changes had been effected by the Legislature. It was, therefore, with some anxiety that we looked into this fourth edition of Mr. Starkie's work in search of that supply which has for some time been so much needed. In this search we have not been disappointed.

It is well known that, owing to the infirmities of the learned author, which rendered him unable to keep pace with the numerous decisions arising out of the system of pleading and practice of the year 1834, the third edition of Mr. Starkie's book was incumbered with an appendix of cases omitted in their proper places, which almost equalled in size one of its three volumes. This fault not only spoiled the work for reference, but prevented those remarks upon the applicability of decisions, which would naturally have arisen had they been woven into their proper places. Many cases, too, were retained which had become useless, and many repetitions were suffered to creep in.

These faults appear to be entirely removed in the edition now before us. The cases and Statutes contained in Mr. Starkie's appendix, together with all the more recent decisions and Statutes, are digested under their proper heads, and, indeed, it should be mentioned to the honour of the publishers, that the last Statute and the most recent decisions have been introduced into their appropriate places at the expense of a very extensive cancellation, and, of course, at a considerable loss. The unnecessary repetitions, and the obsolete and useless cases, have been unsparingly cut away. Amongst these, the large collection of decisions upon the inadmissibility of witnesses on the ground of infancy and interest, and the extensive subjects of variance and amendment, have been entirely struck out; the former having become, from the changes in the law, a mere matter of curiosity, and it being impossible to judge of the importance of the latter until some experience has been had of the working of the Common Law Procedure Act. Perhaps the Editors might, with benefit, have been more liberal in their erasures, although the importance to the practitioner of a ready reference to all the cases upon a subject is willingly acknowledged.

But to what extent soever this censure may be deserved, we think the introduction into the present volume of the law relating to the reciprocal effect of parol and written evidence, and to presumptions, and some other smaller heads, which the learned Author had scattered through his second and third volumes, is a great and unquestionable improvement. The volume published has thus been rendered a complete, clear, and well-digested treatise on the principles of the Law of Evidence. And if, as we collect from the advertisement and

some of the notes, such parts of the doctrines of variance and amendment as may, upon trial of the recent Statute, be found applicable to practice, be introduced in their proper places amongst the digest of proofs, we think the Editors will have gone far towards restoring the admirable work of Mr. Starkie to its original character of the best work on the Law of Evidence which has yet been produced.

It may be worth while to add (as extremely useful to the student) that the Editors have ably arranged and divided the work, and by a full table of contents, an ample index, and numerous marginal notes, have rendered it easily accessible.

## PROFESSIONAL RELATIONS.

### THE JUNIOR BAR AND THE ATTORNEYS.

*To the Editor of the Legal Observer.*

SIR,—As might be anticipated, the Lord Chancellor's observations in the House of Lords, with reference to the relative position and reciprocal duties of the two branches of the Profession, have excited feelings of disappointment, and perhaps of anger, amongst those who took part in the controversy recently waged with so much virulence, and it is be feared with so little edification or advantage to the public. The question, however, returns, is the Chancellor's view just?

Lord St. Leonards disapproves of "attorney-advocates," not that he objects to an attorney arguing his client's case, but his objection is confined to "an attorney being turned into a barrister and acting as an advocate." On the other hand, his lordship has expressed the most unqualified disapprobation of "any small number, or even any considerable number," of the members of the Bar, disregarding "the long-established usages of the Profession, and "acting without the intervention of solicitors." The Chancellor's views are equally unpalatable to those who contend that the suitors in our Courts should be allowed the unrestricted selection of advocates from all branches of the Profession, and to those who insist that the attorney should merge in the advocate. It does not follow that they are erroneous. It is said that extremes meet: in this case assuredly they approximate. Retaliation is the necessary consequence of invasion. If the Bar assert the privilege to act without the intervention of attorneys, the attorneys will insist upon their right to act, not only in the County Courts and

the Court of Bankruptcy, but in the Superior Courts of Law and Equity, without requiring the assistance of counsel. On the other hand, if the Bar were to be deprived of all distinctive privileges, it would be unreasonable to expect that the Bar would lie down and not endeavour to obtain an equal footing with the attorneys. The practical result would be the disruption of the Profession, and the establishment of two bodies of men, one of whom would perform the duties of advocates, and the other exercise the functions of attorneys and solicitors probably under different names. The Public would gain nothing, and the Profession would lose everything, by such a change.

Lord St. Leonards has evinced on this occasion, his characteristic clear-sightedness and decision. His *mot d'ordre* is "let the Profession stand upon its proper basis, let not the barrister trench upon the province of the attorney, nor the attorney upon the province of the advocate." Under the system, which the Chancellor desires to preserve, the Profession has existed and flourished. It remains to be shown why the continuance of that system is incompatible with the future prosperity of the Profession, under the new phase upon which we are now about to enter.

It will probably be suggested, that the existence of "an attorney turned into a barrister and acting as an advocate," as assumed by Lord St. Leonards, is rare and exceptional. If no such instance was to be found, there could be no personal ground of complaint, should attorneys hereafter be restricted to advocating the causes of their own immediate clients, and interdicted from acting as advocates upon the retainers of other attorneys. The question, however, is not whether 10, or even 20 individuals may be damnified by the proposed alteration, but how far it is consistent with the interests of the Profession generally, and of the Public? Emanating as it does from the head of the Profession, who, from character and position, is placed above the suspicion of bias or personal interest, in my poor judgment, the solution which the Lord Chancellor offers, ought to be accepted, freely and unreservedly, and I shall be much disappointed if this view is not disinterestedly adopted by some whose pecuniary interests are most seriously affected. The practical form in which Lord St. Leonards proposes to embody his sentiments on the professional question, however, calls for an observation. By apply-

ing the prohibitory provision found in the County Courts' Amendment Act of last Session, in its terms to proceedings in Bankruptcy, the Lord Chancellor will find that he carries the principle of restriction far beyond what he intends. No one desires, I presume, that a solicitor unable or unwilling to devote his own attention to the various stages in Bankruptcy, should not be at liberty to appoint a brother practitioner, familiar with the proceedings of the Court, as his agent under the ordinary and well-understood regulations of the Profession. What is objected to is, the employment of an attorney to act upon a particular occasion in Court as an advocate. The terms of the clause which the Chancellor has announced his intention of importing into the Bankrupt Law, however, renders it at least questionable whether the appearance of one solicitor as agent for another is not prohibited, and to the modification of this clause, so as to remove all doubts, the attention of the Profession may be advantageously directed.

Appreciating the candour, fairness, and moderation with which you have constantly discussed this question, I venture to hope that, even if the views I entertain do not meet with your concurrence, you will nevertheless deem them not altogether undeserving of publicity, although they come from

AN OLD BARRISTER.

## CHANCERY AND ECCLESIASTICAL COURTS.

### NEW COMMISSION OF INQUIRY.

THE Queen has been pleased to appoint the Right Hon. Sir John Romilly, Knight, Master of the Rolls, the Right Hon. Sir George James Turner, Knight, a Vice-Chancellor, Sir Richard Torin Kindersley, Knight, a Vice-Chancellor, the Right Hon. Sir John Dodson, Knight, Dean of the Arches Court, the Right Hon. Stephen Lushington, Judge of the High Court of Admiralty, Sir Charles Crompton, Knight, one of the Justices of the Court of Queen's Bench, the Right Hon. Sir James Robert George Graham, Bart., the Right Hon. Joseph Warner Henley, Sir John Dorney Harding, Knight, Advocate-General, Sir William Page Wood, Knight, Richard Bethell, Esq., one of her Majesty's Counsel, John Rolt, Esq., one of her Majesty's Counsel, and William Milbourn James, Esq., Barrister-at-Law, to be her Majesty's Commissioners for continuing the Chancery inquiry, and for inquiring into the Law and Jurisdiction of the Ecclesiastical and other Courts, in relation to matters testamentary.—From the *London Gazette* of 23rd Nov.

## QUESTIONS AT THE EXAMINATION.

*Michaelmas Term, 1852.*

### I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any, and what, law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. At Common Law, when a deed is made *inter partes*, can a person beneficially interested in the covenant, but who is not a party to the deed, maintain an action on the deed?
6. When a contract is not under seal, may the person for whose benefit the contract is made, sue thereon, or must the action be brought in the name of the agent who made the contract?
7. What are the principal facts necessary to be proved by affidavit in order to obtain a Judge's order to hold a defendant to bail under stat. 1 & 2 Vict. c. 110?
8. Point out any defects or irregularities in the proceedings which would entitle a defendant to apply to set them aside.
9. Is the writ of *capias* the commencement of the action, or the writ of summons?
10. Explain the meaning of the maxim of "*Actio personalis moritur cum persona*," and give an instance of its application.
11. Has any, and what, alteration been made in that rule of law, by the statute 9 & 10 Vict. c. 93?
12. May an answer in Chancery be used in evidence at Nisi Prius against the party making it?
13. In what cases have the Superior Courts concurrent jurisdiction with the County Courts in actions on contract and in tort?
14. Do the provisions in the County Court Acts restraining the plaintiff's right to costs apply to cases of judgment by default, and when orders to stay are granted?
15. When a verdict has been obtained in the Superior Courts for less than 20*l.* on contract, and the Judge does not certify for costs, what steps can the plaintiff take to obtain his costs, and what would be sufficient grounds to support his application?
16. What is the necessary evidence to support an action on an attorney's bill when the pleas are "Never indebted" and "No signed bill delivered?"
17. When an attesting witness to the execution of a deed is dead, what proof is required of the execution of the deed?
18. What are sufficient grounds to sustain a motion in arrest of judgment?
19. Also to sustain a motion for judgment *non obstante veredicto*?

### III. CONVEYANCING.

20. Give an instance of a chattel real and of a chattel personal.
21. By what words is an estate in fee simple created by a deed? And by what words is an estate tail created by a deed?
22. What is dower? what is freebench? and what is a jointure?
23. What is meant by "Title by purchase" and what by "Title by descent?"
24. What changes in the Law of Dower have been made by the stat. 3 & 4 Wm. 4, c. 105, and do such alterations apply to freebench?
25. In what case does a judgment against a tenant in tail bind his issue and the remainder-man?
26. If an estate be in a register county is a purchaser in any and what case entitled to require that a will should be registered?
27. Should a second mortgagee take any and what precaution to preserve his priority over a third mortgagee, and should he take any and what precaution so as to have priority over a second charge to the first mortgagee?
28. Where a tenancy by lease is for a term certain, is any and what notice to quit required?
29. In what cases will a general devise of all the testator's real and personal estates pass those vested in him in trust, or by way of mortgage?
30. Is the devisee of an estate contracted to be purchased by, but not conveyed to the testator, entitled to have a conveyance from the vendor; and by whom, and from what fund is the purchase-money to be paid?
31. What are the rights of a husband with respect to his wife's reversionary property?
32. Is there any mode by which a testator, seised of copyhold estates and intending that they should be sold after his decease, can avoid the necessity of the admittance of the trustees of his will and the payment of a fine by them before a suit can be effected, and if so, how?
33. If the purchaser of one lot of an estate give a deed of covenant for production of the title to the purchaser of another lot, and afterwards sell and convey the property he bought and part with the deeds, will the covenant run with the land, and will his personal liability under the deed of covenant be discharged, or how is the discharge of it to be provided for, and the production of the deeds secured to the covenantee.
34. If two persons purchase lands and take a conveyance to them and their heirs, but do not advance the money in equal proportions, and this appears by the deed itself, are they joint-tenants; and what will be the effect of the death of one of them?

### IV. EQUITY, AND PRACTICE OF THE COURTS.

35. State some of the grounds of suits in Equity, in which the Court of Chancery has exclusive jurisdiction.
36. What are the powers of Courts of Equity regarding subjects of expected injury?
37. In what cases does a Court of Equity interfere either in aid of or to control an action at law?



38. In what circumstances will equity supply defects in deeds which have been sealed and delivered?

39. Will a Court of Equity give relief in any and what circumstances where a lease has become forfeited by breach of covenant?

40. What course can a trustee take who is desirous of avoiding future responsibility? and what are the practical proceedings necessary?

41. Explain the rule as to marshalling assets.

42. When must the statements in a bill be verified by affidavit?

43. What documents and papers may a defendant be compelled to produce, and are there any and what exceptions?

44. What are the rules to be observed in applying for an injunction?

45. What is the mode of proceeding to prevent the transfer of stock by a party having a reversionary interest therein?

46. What is required in order to take the evidence of a witness *de bene esse*?

47. When is security for costs required from the plaintiff?

48. What process must be served personally on the party, and when will it be sufficient to serve the solicitor?

49. What are the several modes of defence to a bill in Equity?

#### V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. State in general terms the object of the Bankruptcy Laws: by what Statutes they were first introduced, and the principal alterations and improvements made in them.

51. Who are the persons subject to the jurisdiction of the Bankrupt Laws?

52. What Court or Courts have jurisdiction in bankruptcy? And has any, and what, important alteration been made therein; and when, and in what manner?

53. What are the steps necessary to be taken to make a person subject to those laws bankrupt, and before whom?

54. Within what time, whether in town or country, must the petition in bankruptcy be opened, and what are the consequences of its not being opened in due time?

55. What remedies has an individual improperly declared bankrupt, and against whom?

56. Will the death of the bankrupt abate the adjudication at any, and what stage of the proceedings?

57. What is the lowest amount of debt which must be owing to a single creditor to enable him to obtain an adjudication? The same question in the case of two creditors not partners? And where there are more creditors join for a similar purpose?

58. What is essential to constitute a trading within the meaning of the Statute?

59. Will buying only, or selling only, constitute a sufficient and valid trading?

60. State what acts of a trader are deemed acts of bankruptcy, and with what intention must such acts be done?

61. If a debtor, liable to the Bankrupt Laws, has not committed an act of bankruptcy, how can he be proceeded against in order to make him bankrupt?

62. What are the respective rights of joint and separate creditors as to the proof of debts under an adjudication against partners in trade?

63. In case a creditor possesses collateral security for his debt, must he take any and what proceedings before he will be allowed to prove his debt?

64. Are the assignees entitled to property which accrues to the bankrupt after the adjudication? and if so, is there any and what limitation?

#### VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. What is the difference between larceny and embezzlement?

66. Define the offence of obtaining money or goods by false pretences, and state in what particular it differs from larceny.

67. Are there any and what cases in which a prosecutor can claim costs of a defendant?

68. State generally in what cases a *certiorari* may be moved for.

69. State the mode of application and what is required of a party applying for the writ of *certiorari*, either prosecutor or defendant.

70. State in what cases leave to exhibit articles of the peace is applied for.

71. State the mode of application, the material allegations necessary, and what will be required of the party against whom the application is made, if the application be granted.

72. Can the party against whom the articles are granted controvert the statement? if he is bound to submit, what is the remedy if the statement is untrue?

73. State the nature of the proceedings for leave to file a criminal information for libel, the time within which the application must be made, and the material allegations of the prosecutor's affidavit.

74. What is the mode of proceeding to obtain a writ of *habeas corpus*, where a person is alleged to be unlawfully detained, or where a magistrate has refused to admit to bail?

75. When and how can a public footpath be stopped or diverted?

76. In what cases is a prosecutor entitled to costs, and by whom payable, and how ascertained?

77. How far are magistrates responsible for acts done in the discharge of their duty as magistrates, the mode of proceeding, and are they entitled to notice, and if so the object of the notice?

78. What has been substituted by the Legislature for voluntary affidavits, and what is essential to the validity of such substitute?

79. Is a witness in criminal proceedings entitled before leaving home to demand payment of his travelling expenses, and for loss of time?

# **FEES PAYABLE IN THE SUPERIOR COURTS OF COMMON LAW.**

In pursuance of an Act, passed in the session of Parliament held in the fifteenth and sixteenth years of the reign of her Majesty, chapter 73, entitled "An Act to make Provision for a permanent Establishment of Officers to perform the duties at Nisi Prius, in the Superior Courts of Common Law, and for the Payment of such Officers, and of the Judges Clerks by Salaries, and to Abolish certain Offices in those Courts," we, the undersigned, being two of the Commissioners of her Majesty's Treasury, have caused the undermentioned Tables of Fees to be prepared, specifying the fees proper to be demanded, and taken in the offices undermentioned, and at the judges' chambers, in the Superior Courts of Common Law; and that all other fees in such offices and chambers should be abolished, namely:—

## **OFFICES OF THE MASTERS OF THE THREE SUPERIOR COURTS.**

	£	s.	d.
Every writ (except writ of trial or subpoena) . . . . .	0	5	0
Every concurrent, alias, pluries or renewed writ . . . . .	0	2	6
Every writ of trial . . . . .	0	2	0
Every writ of subpoena before a judge or master . . . . .	0	2	0
Every writ of subpoena before the sheriff . . . . .	0	1	0
Every appearance entered . . . . .	0	2	0
Every appearance each defendant after the first . . . . .	0	1	0
Filing every affidavit, writ, or other proceeding . . . . .	0	2	0
Amending every writ, or other proceeding . . . . .	0	2	0
Every ordinary rule . . . . .	0	1	0
Every special rule, not exceeding six folios . . . . .	0	4	0
Every special rule, exceeding six folios, per folio . . . . .	0	0	6
<i>Note.</i> —Plans, sections, &c., accompanying rules, to be paid for by the party taking the rule, according to the actual cost.			
Every judgment by default . . . . .	0	5	0
Every final judgment, otherwise than judgment by default . . . . .	0	10	0
Taxing every bill of costs, not exceeding three folios . . . . .	0	2	0
Taxing every bill of costs, exceeding three folios, when taxed as between party and party, per folio . . . . .	0	0	6
Taxing every bill of costs, exceeding three folios, when taxed as between attorney and client, or where the attorney taxes his own bill, per folio . . . . .	0	1	0
Every reference, inquiry, examination, or other special matter, referred to the Master, for every meeting, not exceeding one hour . . . . .	0	10	0

Every reference, &c., for every additional hour, or less . . . . .	0	10	0
Upon payment of money into court, viz.—			
For every sum under 50 <i>l.</i> . . . . .	0	5	0
50 <i>l.</i> and under 100 <i>l.</i> . . . . .	0	10	0
100 <i>l.</i> and above that sum . . . . .	1	0	0
Every certificate . . . . .	0	1	0
Office copies of præcipe, or other proceedings, per folio . . . . .	0	0	6
Every search, if not more than two terms . . . . .	0	0	6
Every search exceeding two, and not more than four terms . . . . .	0	1	0
Every search exceeding four terms, or a general search . . . . .	0	2	6
Every affidavit, affirmation, &c., taken before the Master . . . . .	0	1	0
Filing every recognizance or security in ejectment or error . . . . .	0	2	6
Every allowance and justification of bail . . . . .	0	3	0
For taking special bail as a commissioner . . . . .	0	2	0
Filing affidavit, and inrolling articles previous to the admission of an attorney . . . . .	0	5	0
Every re-admission of an attorney . . . . .	0	5	0
All other fees than those before mentioned are hereby abolished, and are not to be taken by any person in the Masters' offices, under any pretence whatever.			
<b>OFFICES OF THE ASSOCIATES TO THE THREE CHIEF JUDGES.</b>			
	£	s.	d.
Every record of Nisi Prius, delivered to the associate, to be entered for trial . . . . .	1	5	0
Every trial of a cause from plaintiff . . . . .	1	0	0
Every trial of a cause from defendant . . . . .	0	15	0
Every trial of a cause if the trial continues more than one day, then for every other day, from plaintiff and defendant, each . . . . .	0	10	0
Returning the postea . . . . .	0	5	0
Every cause made remanet, at the instance of the parties, to be paid by plaintiff or defendant, as the case may be . . . . .	0	10	0
Every cause withdrawn, to be paid by the party at whose instance it is withdrawn . . . . .	0	5	0
Re-entering every record of Nisi Prius, made remanet, &c. . . . .	0	2	0
Every reference, from plaintiff and defendant, each . . . . .	0	3	0
Every amendment of any proceeding whatever . . . . .	0	2	0
Every order or certificate . . . . .	0	5	0
Every special case, or special verdict, in addition to the charge for ingrossing and copying, at the rate of 4 <i>d.</i> per folio, from plaintiff and defendant, each . . . . .	0	10	0
Attending any court, or otherwise, with any record, or other proceed-			

ing, under writ of subœna, or special order of court per day . . . 1 0 0  
 All other fees than those before-mentioned are abolished, and are not to be taken by any person in the Associates' offices, under any pretence whatever.

CHAMBERS OF THE CHIEF AND PUISNE JUDGES.

	£	s.	d.
Every summons to try an issue before the sheriff . . .	0	1	0
Every other summons whatever, whether in term or vacation . . .	0	2	0
Every order to try an issue before the sheriff . . .	0	1	0
Every other order whatever of an ordinary nature . . .	0	2	0
Every order of a special nature, such as reference to arbitration, or attendance of witnesses at arbitration; service of process on persons residing abroad; reference to the Master to fix sum for final judgment; revival of judgment, and the like . . .	0	5	0
Every fiat, warrant, certificate, caveat, special case, special verdict, or the like . . .	0	5	0
Every affidavit, affirmation, &c., whether in term or vacation, each deponent . . .	0	1	0
Every affidavit kept for the purpose of being conveyed to the proper office to be filed . . .	0	1	0
Every proceeding filed . . .	0	2	0
Every admission of an attorney . . .	1	0	0
Every approbation of commissioners for taking affidavits or special bail . . .	0	2	6
Every commission for taking affidavits or special bail, exclusive of stamp duty, ingrossing and sealing . . .	1	0	0
Every other commission for any purpose whatever, exclusive of stamp duty, ingrossing and sealing . . .	0	10	0
Every acknowledgment by married women . . .	0	10	0
Office copies of judge's notes, or of any other proceeding whatever, per folio . . .	0	0	6
Every recognizance or bond of any description whatever . . .	0	10	0
Every allowance of writ of error . . .	0	10	0
Bail on cepi corpus, habeas corpus, error or ejectment . . .	0	2	0
Delivering bail piece off the file, or justification of bail . . .	0	2	0
Every committal . . .	0	5	0
Every exhibit signed by judge . . .	0	1	0
Producing judge's notes . . .	0	5	0
Bill of exceptions signed by judge . . .	0	5	0
Order in legacy duty cases . . .	0	5	0
Crown revenue cases, from defendant . . .	0	5	0
Attendance in any court, or otherwise, under subpoena or special order of Court, to give evidence, or produce documents, per day . . .	1	0	0
Attendance as a commissioner to take			

affidavit, &c., or at a judge's house, £ s. d.			
or elsewhere, at the request of parties . . .	0	10	0
Appointment of Commissioners under glebe exchange . . .	1	0	0
Allowance of bye-laws or table of fees . . .	1	0	0
Report on private bill . . .	5	0	0
Attendance by counsel, each side . . .	0	5	0

*Note.*—All plans, sections, &c., accompanying any order or office copy to be paid for by the party, according to the actual cost.

In cases where the party has been allowed to sue in *forma pauperis*, the fees are not to be demanded or taken, nor in cases where such fees would be payable by any Revenue or other Government department.

All other fees than those before mentioned are hereby abolished, and are not to be taken by any person at the Judge's chambers, under any pretence whatever.

Given under our hands at the Treasury Chambers, Whitehall, this 20th day of November, 1852.

CHANDOS,

THOS. BATESON, two of the Commissioners of her Majesty's Treasury.

We, the undersigned Judges of the Superior Courts of Common Law, do settle, allow, and sanction, the before-mentioned table of fees prepared by the Commissioners of her Majesty's Treasury, and we do hereby establish the same, under the provisions of the aforesaid Act.

Dated the 22nd day of November, 1852.

CAMPBELL, L.C.J. of the Court of Queen's Bench.

JOHN JERVIS, L.C.J. of the Court of Common Pleas.

FRED. POLLOCK, L.C.B. of the Court of Exchequer.

W. H. MAULE,

E. V. WILLIAMS,

T. N. TALFOURD,

Judges of the Court of Common Pleas.

The before-mentioned tables of fees having been sanctioned and allowed by the Lord Chief Justices, the Lord Chief Baron, and other Judges, as required by the said Act, we do hereby order that the said tables of fees be inserted and published in the *London Gazette*.

Treasury Chambers, Whitehall, the 22nd day of November, 1852.

CHANDOS,

THOS. BATESON,

Two of the Commissioners of her Majesty's Treasury.

### NISI PRIUS COURT FEES.

*To the Editor of the Legal Observer.*

SIR,—It has been my misfortune this day to have "tried" a common jury cause. I had comforted my client with the assurance that this proceeding was to cost but little money now that we had our Common Law Procedure Act, and, in so doing, I am sorry to say I have

mised him very materially. The defendant, in the action I speak of, pleaded only that he did not indorse the bill of exchange mentioned in the declaration; he did not instruct any counsel to appear for him, and one witness having verified the defendant's handwriting, a verdict passed for the plaintiff. After the trial was over, and it lasted but about ten minutes, two pieces of paper were placed in my hand—one a ragged scrap, with characters thereon about as regular as our new militia levies, the other a nicely lithographed square piece; of both these documents I send you copies, and shall be greatly obliged if you or any of your correspondents can enable me to satisfy my client's request, to be informed of the particular services rendered in exchange for these payments. As far as my cause was concerned, all the duty I observed the person whom I took for "Crier" perform, was to say "hush" when the Court retired.

AN OLD SUBSCRIBER.

Marshal . . . 0 19 0	Q. B.
Clk. Nisi Prius 0 18 0	Jury.
Crier . . . 0 15 0	Hallkeeper.
	Tipstiff.
	Summoning Officers.
Plt. £2 12 6	Barr Keepers.
	£1 7 0

NEW ORDER IN LUNACY.

OFFICE COPIES.

16th November, 1852.

I, EDWARD BURTENSHAW, Baron St. Leonards, Lord High Chancellor of Great Britain, intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, do order,

That all office copies and other copies of proceedings and documents in matters in lunacy, shall be counted after the rate of 90 words to the folio, and where the same, or any portion thereof, shall be written with columns containing figures, in every such case each figure, or combination of figures, representing a distinct denomination, shall be counted as one word, therefore, 4,151 16s. 9d. would count as three words.

(Signed) ST. LEONARDS, C.

LOCAL AND PERSONAL ACTS,

Declared Public, and to be Judicially Noticed.

15 & 16 VICT. 1852.

[Continued from p. 52, ante.]

91. An act for maintaining in repair the Road from Bury to Bolton in the County Palatine of Lancaster.

92. An act to repeal an Act for maintaining and repairing the Turnpike Road from Bramley in the county of Surrey to Ridgewick in the county of Sussex, and to make other provisions in lieu thereof.

93. An act to repeal the Act for repairing and maintaining the Wakefield and Denby Dale Turnpike Road, and to make other provisions in lieu thereof.

94. An act for continuing the Term and amending and extending the provisions of the Act relating to the Rotherham and Pleasley Turnpike Road.

95. An act for making a Railway from the Edinburgh, Perth, and Dundee Railway at Thornton Junction Station to the town of Leven, with branches to the Kirkland Works and to the harbour of Leven.

96. An act to enable the Lancashire and Yorkshire and York and North Midland Railway Companies to enter into arrangements as to the working and management of portions of their railways.

97. An act for more effectually repairing the Road from the town of Beaconsfield to the river Colne all in the county of Buckingham.

98. An act for enabling the Manchester, Buxton, Matlock, and Midlands Junction Railway Company to lease their undertaking to the London and North Western and the Midland Railways Companies.

99. An act to repeal an Act for repairing the Road from Kettering to the town of Northampton in the county of Northampton, and to substitute other provisions in lieu thereof.

100. An act to confer additional Facilities for the Insurance of Railway Passengers and other Persons by "The Railway Passengers' Assurance Company."

101. An act to amend an Act passed in the 4th year of the reign of King George the Fourth, intituled "An act for making and maintaining a Turnpike Road from Holehouse or Riding near Greenfield in Saddleworth, to join the Stayley Turnpike Road, and also to join the Halifax and Sheffield Turnpike Road, all in the West Riding of the County of York; and to continue the term thereby granted.

102. An act for enabling the Leeds Waterworks Company to provide a better Supply of Water to the town and neighbourhood of Leeds.

103. An act for Merging the Undertaking of the Reading, Guildford, and Reigate Railway Company in the undertaking of the South Eastern Railway Company; for the Dissolution of the Reading, Guildford, and Reigate Railway Company; and for other purposes.

104. An act for the Establishment, Maintenance, and Management of Markets in the borough of Limerick.

105. An act to authorise the Conversion of the Debenture Debt of the London and North Western Railway Company into a stock not exceeding Three and a-Half per Centum; and for enlarging the Stations at Wolverton and Kilburn.

106. An act for the Construction of a new Bridge over the River Foyle at Londonderry and approaches thereto.

107. An act for the Formation of a new Street in the Borough of Londonderry.

108. An act to enable the Eastern Counties

Railway Company to use the East Anglian Railways, and to empower the Eastern Counties Railway Company and the East Anglian Railway Company to enter into and carry into effect agreements for certain objects therein mentioned; and for other purposes.

109. An act to consolidate and amend certain of the Acts relating to the Edinburgh and Glasgow Railway, and to grant further powers to the Company of Proprietors thereof.

110. An act for repealing an Act of the 9th year of the reign of her present Majesty, relating to Moorings for Vessels in the River Tyne, and the River Police, and for transferring the powers of the said Act to the Tyne Improvement Commissioners; for enabling the said Commissioners to construct and maintain Piers at the mouth of the said river in the counties of Durham and Northumberland, and to construct and maintain Docks and other works on the north side of the said river in the last-mentioned county; and for other purposes.

111. An act for embanking and reclaiming from the Sea the Estuary or Back Strand of Tramore in the county of Waterford.

112. An act for the Incorporation of the Society for providing Annuities for the Widows and Children of Presbyterian Ministers, under the style and title of "The Presbyterian Widows' Fund Association."

113. An act to enable the Trustees of the Yeovil Turnpike Trust to make certain new Roads, to repeal existing Acts, and create further Terms in the said Roads; and for other purposes.

114. An act for enabling the York, Newcastle, and Berwick Railway Company to make a Deviation in the Line of their Bishop Auckland Branch, to extend the Time for the Purchase of Lands and Completion of Works on certain lines of railway authorised to be made in the county of Durham, and for other purposes.

[To be continued.]

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with date when gazetted.*

James, Thomas Smith, Birmingham, in and

for the County of Warwick, also in and for the Counties of Stafford and Worcester. Nov. 12.

Selby, John Vinall, Sittingbourne, in and for the County of Kent. Oct. 29.

### MASTER EXTRAORDINARY IN CHANCERY.

*From August 24th to November 19th, 1852, both inclusive, with date when gazetted.*

Mustard, David, Mistley and Manningtree. Oct. 29.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From August 24th, to November 19th, 1852, both inclusive, with dates when gazetted.*

Barrow, Richard Bridgman, and Joseph Phipps Townsend, Southwell, Attorneys and Solicitors. Nov. 5.

Walcot, Thomas, and William Carr, 13, Swithin's Lane, City, Solicitors and Attorneys. Nov. 5.

## NOTES OF THE WEEK.

### THE LORD CHANCELLOR'S SITTINGS.

The Lord Chancellor will sit next week and thenceforward as follows:—

Monday . . . . .	} House of Lords.
Tuesday . . . . .	
Friday . . . . .	
Wednesday . . . . .	} Court of Chancery.
Thursday . . . . .	

### LAW PROMOTIONS.

The Queen has been graciously pleased to give orders for the appointment of Sir Robert Horsford, Knight, Chief Justice for the Islands of Antigua and Montserrat, to be an Ordinary Member of the Civil Division of the Third Class or Companions of the Most Honourable Order of the Bath.

The Queen has also been pleased to direct Letters Patent to be passed under the Great Seal granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland unto William d Beckett, Esq., Chief Justice of the Colony of Victoria. From the *London Gazette* of Nov. 19.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

Nov. 16.—*Barrington v. Liddell*—Cur. ad. vult.

—20.—*Hawkes v. Eastern Counties' Railway Company*—Appeal from Vice-Chancellor Knight Bruce dismissed, with costs.

—20.—*Smithson v. Powell*—Appeal from Vice-Chancellor Knight Bruce dismissed, with costs.

### Lords Justices.

*Yeatman v. Mossley*. Nov. 20, 1852.

ALTERATION OF PRINTED CLAIM.—FILING WITH CLERK OF RECORD AND WRITS.

*Order made on Clerk of Record and Writs to file a claim which had been amended by altering the name of the next friend of the infant plaintiff in the title from "Constantia Maria" to "Maria Constantia."*

THIS was an application by direction of Vice-Chancellor Kindersley, for an order on the Record and Writs Clerk to receive and file a printed claim in which the Christian name of the next friend of the infant plaintiff had been altered in the title from "*Constantia Maria*" to "*Maria Constantia*."

*Schomberg* in support.

The *Lords Justices* said, that the claim, as altered, might be received and filed as a printed bill or claim within the 2nd sect.<sup>1</sup> of the 15 & 16 Vict. c. 86, and especially as the plaintiff might have amended it after filing it under the 8th sect.<sup>2</sup>

*Atkinson v. Parker.* Nov. 20, 1852.

**JURISDICTION IN EQUITY IMPROVEMENT ACT.—ORDER TO REVIVE AGAINST TRUSTEES OF SETTLEMENT OF FEMALE INFANT PLAINTIFF.**

*In an administration suit on behalf of a female plaintiff, and which had, upon her marriage, been revived against her husband, and a settlement of her property made therein, an order was made under the 15 & 16 Vict. c. 86, s. 52, to make the trustees of the settlement parties without filing a supplemental bill.*

THIS was an administration suit on behalf of a female infant in reference to real and personal property, and a bill of revivor had been filed against her husband, upon her marriage without the sanction of the Court, and a settlement had been approved and executed on a reference to the Master.

*Hardy* now applied, by the direction of Vice-Chancellor *Stuart*, for an order under the 15 &

<sup>1</sup> Which enacts, that "the practice of engrossing on parchment bills of complaint or claims to be filed in the said Court, and of filing such engrossment, shall be discontinued; and the Clerks of Record and Writs of the said Court shall receive and file a printed bill of complaint or claim, in lieu of an engrossment thereof, in like manner as they now receive and file such engrossment."

<sup>2</sup> Which provides, that "upon the amendment of any bill of complaint or claim to be filed in the said Court after the time herein-after appointed for the commencement of this Act, the provisions hereinbefore contained with respect to filing "shall, so far as may be, extend and be applicable to the bill or claim as amended: Provided that where, according to the present practice of the said Court, an amendment of a bill or claim may be made without a new engrossment thereof, or under such other circumstances as shall be prescribed by any general order of the Lord Chancellor in that behalf, a bill or claim may be wholly or partially amended by written alterations in the printed bill of complaint or claim so to be filed as aforesaid."

16 Vict. c. 86, s. 52, to add the trustees of the settlement as defendants, without filing a supplemental bill.

The *Lords Justices* said, that the order might be made under the authority of the words "change or transmission of interest or liability," in the section cited.

Nov. 16.—*Martin v. Pycroft*—*Cur. ad. vult.*

— 17.—*In re Rutter*—Report confirmed of Master in Lunacy, as to appointment of committee with reference as to propriety of carrying on business.

— 19.—*Wilton v. Hill*—Stand over.

— 16, 22.—*Ward v. Homfray*—Part heard.

— 17, 19, 20, 22.—*In re Farley, ex parte Danks*—Petition dismissed.

— 22.—*Anon.*—Application refused on behalf of committee of lunatic for order to open will.

— 23.—*Ex parte Turner, in re Crossthwaite*—Application for rehearing refused, with costs.

### Master of the Rolls.

*Booth v. Tomlinson.* Nov. 19, 22, 1852.

**JURISDICTION IN EQUITY IMPROVEMENT ACT.—EXAMINATION OF DEFENDANT VIVA VOCE.—PRACTICE.**

*An application was refused, but without costs, for leave to examine a defendant viva voce, after the cause was at issue, under the 15 & 16 Vict. c. 86, ss. 39, 41, where there had been a decree for his examination upon interrogatories, and the case was directed to proceed according to the former practice.*

THIS was an application for leave to examine a defendant *viva voce*, after the cause was at issue, under the 15 & 16 Vict. c. 86, ss. 39, 41.<sup>1</sup>

*Lloyd and Hislop Clarke* in support.

*Follett and Kinglake*, *contra*.

The Master of the Rolls, after consulting the other Judges, said, that as there had been a decree to examine the defendant on interrogatories, the case must be proceeded with according to the old practice, and the motion would be refused, but without costs.

<sup>1</sup> Which enacts, s. 39, that "upon the hearing of any cause depending in the said Court, whether commenced by bill or by claim, the Court, if it shall see fit so to do, may require the production and real examination before itself of any witness or party in the cause;" and s. 41, that "in cases where it shall be necessary for any party to any cause depending in the said Court to go into evidence subsequently to the hearing of such cause, such evidence shall be taken as nearly as may be in the manner hereinbefore provided, with reference to the taking of evidence with a view to such hearing."

*Morris v. Hannam.* Nov. 19, 1852.

**PRODUCTION OF DOCUMENTS.—ORDER FOR.  
—PRACTICE.**

*Order made upon notice for production of documents, &c., admitted by the defendant's answer to be in his possession.*

THE Master of the Rolls, upon the motion upon a renewed notice in this case by *Bilton* (*vide ante*, p. 53), for an order for the production of certain documents, &c., admitted by the defendant by his answer to be in his possession, said that the order would be made, as the application for production in similar cases was proper to be made in Court and not at Chambers.

Nov. 16.—*Roberts v. Berry*—Judgment herein.

— 16.—*Clarke v. May*—Stand over.

— 16.—*Pegg v. Wisden*—Decree for specific performance.

— 19.—*Carew v. Yates and others*—Injunction granted.

— 20.—*Furnivall v. Bleden*—Decree for specific performance.

— 20.—*Penny v. Pickwick*—Decree for the plaintiff.

— 20.—*Beynon v. Aitkin*—Stand over.

— 20.—*Campbell v. Allgood*—Injunction granted.

— 20.—*Marshall v. Fowler*—Order on claim for settlement of fund on wife.

— 22.—*Mellers v. Duke of Devonshire*—Demurrers allowed for want of equity.

— 16, 17, 23.—*Shrewsbury and Birmingham Railway Company v. London and North Western Railway Company and others*—Part heard.

— 23.—*Horns v. Holam; Fortnam v. Same*—Decree for redemption or foreclosure.

**Vice-Chancellor Turner.**

*Cook v. Hall.* Nov. 17, 1852.

**WITNESSES EXAMINED DE BENE ESSE.—  
EXAMINATION BEFORE EXAMINER VIVA VOCE.**

*Where witnesses had been examined de bene esse before the cause was at issue, they were ordered to be examined viva voce before one examiner, and the appointment of two examiners for the purpose was refused.*

In this case certain witnesses had been examined *de bene esse* before the cause was at issue.

By sect. 23 of the 15 & 16 Vict. c. 86, it is enacted, that "the mode of examining witnesses in causes in the said Court, and all the practice of the said Court in relation thereto, so far as such practice shall be inconsistent with the mode hereinafter prescribed of examining such witnesses, and the practice in relation thereto, shall, from and after the time appointed for the commencement of this Act, be abolished: Provided always, that the Court

may, if it shall think fit, order any particular witness or witnesses within the jurisdiction of the said Court, or any witness or witnesses out of the jurisdiction of the said Court, to be examined upon interrogatories in the mode now practised in the said Court, and that with respect to such witness or witnesses the practice of the said Court in relation to the examination of witnesses shall continue in force."

*Pearson* for the plaintiff; *Cole* for the defendant.

The Vice-Chancellor, after consulting the other Judges, said, that the witnesses must be examined *viva voce* before one examiner, and that the application for the appointment of two examiners for the purpose must be refused; but if the parties disagreed upon the examiner, the Court would appoint one.

Nov. 16.—*Barham v. Earl of Clarendon*—Cur. ad. vult.

— 17.—*Lewis v. South Western Railway Company*—Plaintiff held entitled to interest on purchase-money from time of payment of money into Court.

— 19.—*Espey v. Lake*—Injunction granted.

— 16, 20.—*Graham v. Ackroyd*—Cur. ad. vult.

— 20.—*Penfold v. Penfold*—Stand over.

— 20.—*Callow v. Woodbridge*—Injunction refused.

— 20.—*Baker v. Bradley*—Order for production of documents.

— 22, 23.—*Thompson v. Daniel*—Part heard.

**Vice-Chancellor Kindersley.**

*Clark v. Clark.* Nov. 23, 1852.

**JURISDICTION IN EQUITY IMPROVEMENT  
ACT.—SERVICE OF NOTICE OF DECREE ON  
INFANT.**

*Notice of decree under the 15 & 16 Vict. c. 86, s. 42, rule 8, in a claim on behalf of a residuary legatee, was directed to be served on an infant in the same way as any other party.*

In this claim, which was filed on behalf of a residuary legatee, a question arose, how an infant was to be served with notice of the decree.

By the 15 & 16 Vict. c. 86, s. 42, rule 8, "the persons who, according to the present practice of the Court, would be necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit."

*Bazalgette* and *Busk* for the respective parties.

The Vice-Chancellor said, that the infant must be served in the same way as any other party, and any difficulty arising therefrom would be considered when it arose.

Nov. 16.—*Vigurs v. Vigurs*—Stand over for action to be brought at law.

— 19.—*In re Atkinson's Trust*—Administration to be taken out to party entitled to legacy.

— 19.—*Falk v. Gibson*—Motion to enlarge publication dismissed, with costs.

— 20.—*King v. Mullins*—Injunction granted.

— 20.—*In re Boston, Newark, and Sheffield Railway Company, ex parte Williams*—Petition dismissed, without costs.

— 22.—*Winch v. Birkenhead, Lancashire, and Cheshire Junction Railway Company*—Injunction continued.

### Vice-Chancellor Stuart.

*Jawrey v. Rumney.* Nov. 10, 1852.

WILL. — CONSTRUCTION. — MISTAKE IN AMOUNT AND DESCRIPTION OF STOCK. — LEGACIES. — ABATEMENT.

*A testatrix gave certain stock, described as 3 per cent. consols, and standing in her name in the books of the Governor and Company of the Bank of England, to a larger amount than there was of such stock, and it appeared all her stock, which consisted also of 3½ per cents. and South Sea, was in her late husband's name: Held, that the legatees were entitled to resort to the other stocks, and were not liable to abate.*

THE testatrix, by her will and codicil, gave certain sums, amounting to 3,800*l.* 3 per cent. consols, "part of the stock standing in my name in the books of the Governor and Company of the Bank of England." It appeared that the stock to which she was at her death entitled was all standing in her late husband's name, and that she had only 2,500*l.* 3 per cents. She also had 2,000*l.* 3½ per cents., and 500*l.* South Sea stock.

*G. M. Giffard* for the plaintiff; *R. W. E. Forster* and *Martineau* for other parties.

The Vice-Chancellor said, that as it sufficiently appeared the testatrix intended all the stock standing in the books of the Governor and Company of the Bank of England should be applied in payment of the legacies, the legatees were entitled to resort to the other stock, and were not liable to abate.

Nov. 20.—*In re Briton Friendly Society*—Order for payment of moneys by trustees.

— 17, 19, 22, 23.—*James v. Lord Wynford*—Part heard.

### Court of Queen's Bench.

*Regina v. Harrison and another.* Nov. 17, 1852.

POOR-RATE.—LIABILITY OF SHIP-BUILDING YARD TO INCREASED RATE FOR FLOATING DOCK.

*Held, on appeal from and reducing the rate of the Sessions, that the occupiers of a ship-building yard were not liable to be rated to*

*the poor in an increased rate, on account of a floating dock connected therewith.*

THIS was an appeal from the Quarter Sessions, holding that the occupiers of a floating dock adjoining a ship-building yard, were liable to be rated to the poor, in respect of the value of the yard as increased by the floating dock, under the 43 Eliz. c. 5.

*Cur. ad. vult.*

The Court said, that the rate, in which the value of the dock had been considered, could not be sustained, and must therefore be amended by being reduced.

Nov. 16.—*Regina v. York and North Midland Railway Company*—Peremptory mandamus on defendants to complete portion of line.

— 16.—*Regina v. Lancaster and Yorkshire Railway Company*—Peremptory mandamus on defendants to complete portion of line.

— 16.—*Tallis v. Tallis*—*Cur. ad. vult.*

— 17.—*Regina (ex parte Brooke) v. Eastern Archipelago Company*—*Cur. ad. vult.*

— 19.—*Leverick v. Mercer*—*Cur. ad. vult.*

— 19.—*Catchpole v. Ambergate Railway Company*—On demurrer to declaration, judgment for plaintiff.

— 20.—*Cobbett v. Hudson*—Rule absolute for new trial.

— 20.—*Regina v. Great Western Railway Company*—Peremptory mandamus.

— 20.—*Henniker v. Henniker*—Judgment for the plaintiff.

— 22.—*Regina v. Newman*—Rule nisi for new trial on the ground of verdict being against the weight of evidence.

— 23.—*Regina (on the prosecution of Sir C. Napier) v. Murray*—Rule refused for criminal information for libel.

— 23.—*Regina (on the prosecution of Blackstone) v. Duffield*—Rule discharged for criminal information for libel, without costs.

— 23.—*Regina (on the prosecution of Earl Hardinge) v. Davies*—Rule for criminal information for libel discharged on payment of costs.

— 23.—*Regina v. Judge of County Court of Devonshire*—Rule absolute for prohibition.

— 23.—*Ex parte Barthelemy and another*—*Cur. ad. vult.*

— 23.—*Pigott v. Jackson*—Rule discharged.

### Queen's Bench Practice Court.

Nov. 19.—*Regina v. Mayor, &c. of Poole*—Rule nisi for mandamus on defendants to elect sheriff.

— 19.—*Amies v. Kelsey*—Rule nisi for inspection of machinery alleged to infringe patent.

— 19.—*Regina v. Hamp and others*—Rule discharged for *procedendo*.

— 20.—*Same v. Same*—Rule nisi on prosecutor to deliver particulars of counts in declaration.

— 20.—*Robinson v. Sherring*—Rule refused for prohibition to County Court Judge.

— 22.—*Regina v. Judge of County Court of*



*Kent*—Rule nisi for mandamus on defendant to try plaintiff.

Nov. 22.—*Regina v. Lords of the Treasury*—Rule nisi for mandamus on defendants to pay arrears of salary to prosecutor.

— 22, 23.—*Regina (on prosecution of Rowe) v. Jackson*—Rule refused for criminal information for libel.

### Common Pleas.

*Beeson, appellant; Burton, respondent.* Nov. 17, 1852.

COUNTY VOTE. — FREEHOLDER. — QUALIFICATION IN RESPECT OF ALLOTMENT UNDER INCLOSURE ACT.

*Under a local inclosure act, the freemen of L. were entitled to hold the allotments of commonable land so long as they should think fit, provided they paid the rent and obeyed the rules and regulations of the deputies in whom the land was vested in trust for them: Held, dismissing with costs an appeal from the revising barrister, that the holders of such allotments were entitled to be registered as freeholders for the county.*

It appeared that the freemen of the borough of Leicester were entitled to hold so long as they should think fit certain allotments of commonable land under their local inclosure act provided they paid the rent and obeyed the rules and regulations made by the deputies, in whom and their successors, the land was vested in trust for them, and they were also authorised to sell or exchange upon the consent of the majority of the holders. The revising barrister having held that the respondent, who was a freeman, was entitled to be placed on the list of county voters in respect of such property, this appeal was presented.

*Cox* in support; *Hayes*, contra.

The Court said, it was not pretended the holders of allotments were tenants at will, but that it was a sort of parliamentary estate and insufficient to confer the franchise, but it was clear the words created a freehold, and the decision must be affirmed with costs.

Nov. 16.—*Barringer v. Handley*—Rule absolute to proceed against defendant as if personal service had been effected.

— 16.—*Roberts v. Bethell*—Rule discharged for new trial, with costs.

— 17.—*Moore, appellant; Overseers of Carisbrooke, respondents*—Decision affirmed, with costs.

— 17.—*Feddon, appellant; Sawyer, respondent*—*Cur. ad. vult.*

— 19.—*Morgan v. Clifton*—Stand over.

— 19.—*Willoughby and others v. Horridge and others*—Appeal dismissed, with costs, from Liverpool County Court.

— 20.—*Burrell, appellant; Buckmaster, respondent*—Appeal allowed, without costs.

— 22.—*Harris v. Thompson*—Rule absolute for a nonsuit.

— 23.—*Fisher v. Ronolds*—Rule refused for new trial.

Nov. 23.—*Rowe v. Tipper*—Rule nisi to enter verdict for plaintiff on issue, and cross-rule nisi to enter it for the defendant on the 3rd issue.

### Court of Exchequer.

*Attwood v. Hill.* Nov. 5, 1852.

SALE OF CHATTEL BY OWNER WITH CONDITION ATTACHED. — TITLE OF PURCHASER.

*A member of a boat-building society had won a boat by ballot under their rules, but he had to pay certain subsequent payments, and on default the society was entitled to seize the boat. He afterwards sold to the plaintiff, but upon his omitting to pay an instalment, the boat was seized: Held, discharging a rule nisi for a new trial on the ground of misdirection, that the plaintiff could not recover in trespass against the society for such seizure, as the sale to him was not in market overt, and that his remedy was against the seller to him.*

THIS was a motion for a new trial, on the ground of misdirection, of this action, which was in trespass for seizing a boat. It appeared on the trial before Cresswell, J., at the last Staffordshire Assizes, that a member of a boat-building society, named Woodall, had won the boat at a ballot under their rules, and he was required to make certain further payments, or in default the defendants were entitled to seize the boat and reimburse the amount so left unpaid. Woodall subsequently sold the boat to the plaintiff, who was ignorant of the terms on which he owned it, and upon its being seized by the defendants on Woodall omitting to pay the instalments due, this action was brought. The jury having, under the direction of the learned Judge, found a verdict for the defendants.

*Whateley* now moved for a new trial.

The Court said, that Woodall could only sell the boat subject to the payment of the instalments due to the defendants, and that, as the sale was not in market overt, the plaintiff's remedy was against him, and the rule was therefore refused.

Nov. 16.—*Laveroni v. Drury and another*—Rule refused for new trial on the ground of misdirection.

— 16, 17.—*Guardians of the Romford Union v. British Guarantee Association*—Rule absolute for new trial.

— 20.—*Young and others v. Waud*—Rule absolute to enter a nonsuit.

— 22.—*Crowhurst and wife v. Laverack*—*Stet processus.*

— 22.—*Mulhall v. Neville*—Rule absolute for new trial.

— 22.—*Stedman v. Knight*—Rule absolute for review of taxation.

— 23.—*Henshaw v. Brice*—Rule discharged for new trial.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, DECEMBER 4, 1852.  
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## PROGRESS OF LEGAL LEGISLATION.

### IRISH COMMON LAW PROCEDURE BILL.

THE earnestness with which the present Government addresses itself to the subject of Legal Reform is altogether unprecedented. If its progress be not interrupted by some of those contingencies to which every administration is liable, this fruitful field—from which so large a political capital has at different periods been realised—will be exhausted, and nothing but the gleanings left for those who may come after.

The measure recently presented to the House of Commons, by the Solicitor-General for Ireland, to amend the procedure of the Common Law Courts in that part of the United Kingdom, is of a most sweeping character, and necessarily challenges a comparison with the Act passed last Session for amending “the process, practice, and mode of pleading in the Superior Courts of Common Law at Westminster,” which it is only just to add, though it was adopted by the present Government, did not originate with it.

The Bill of the Irish Solicitor-General has a much wider scope than the measure which came into operation in England on the 24th October last, and it is framed avowedly in a different spirit. The preamble of the Irish Bill recites, “that it is expedient to simplify and amend the course of procedure as to the process, practice, pleadings, and evidence in the Superior Courts of Common Law in Ireland, so as to make the same less dilatory and expensive, and to prevent substantial justice from being defeated by reason of the variety of forms of action, the technicalities and prolixity of pleadings, and the unnecessary length of records; and to consolidate the provisions of several Statutes and rules of Court relating to such proceedings, and

also to enable the Superior Courts of Common Law to give effect to certain legal rights and just defences, so far as might be, without the expense and delay of a resort to a Court of Equity;” and, in explaining its provisions, Mr. Whiteside stated, with commendable frankness, that, in his judgment, the reform of the Courts of Law had begun at the wrong end. In Ireland, as in England, the tribunals superior in structure and better in design were left to administer justice with a costly and cumbrous machinery, whilst inferior tribunals were created in which the system of procedure was simple and inexpensive. The Courts corresponding with the County Courts in this country, and which are called “Assistant Barristers’ Courts” in Ireland, have a civil jurisdiction up to 40%, and it was distinctly admitted, as any one who has considered the subject has long since felt, that it was impossible to say, that debts or demands to the amount of 40% should be adjudicated upon under one system, and debts or demands of a larger amount by another. Two sets of tribunals, acting on opposite principles, and by a totally different course of procedure, could not advantageously co-exist, and the public were fairly entitled to demand that the system which was preferable should be exclusively maintained.

Proceeding upon views which *up to this point*, we are disposed to think are based upon sound philosophical principles, the Irish Bill proceeds to establish a new system, differing as much from what has hitherto been the procedure of the Superior Courts of Common Law as from that of the County Courts. The distinction between the various forms of action and the artificial system of pleading founded upon that distinction, are both swept away. The ground of action and the ground of defence are to be

stated in writing intelligibly and in ordinary language, but as it was felt that by allowing this latitude to the parties the true question to be tried may not always be readily ascertained, it is proposed that in every case the plaintiff should supply an abstract of the issue to be tried, and if the adverse party conceives that the question has been unfairly stated by the plaintiff, he may apply to a Judge at the risk of costs, who is finally to settle the issue to be tried. As our readers will at once perceive, this is altogether different from any form of proceeding in the County Courts, and perhaps may fairly be considered as an improvement on County Court Practice, as it affords the litigants some opportunity of knowing what the question for trial is before they proceed to trial, and does not leave it to the Judge to eliminate an issue from the conflicting and rambling statements of the parties made *voir voce*. The process calling upon the defendant to appear, and which is called a *plaint*, is also to contain a concise statement of the cause of action, so that the declaration as a separate step is to be abolished: whilst, on the other hand, appearance and defence are to be combined and to form together but one step; and plaintiff and defendant respectively are to be required to verify by affidavit the *plaint* and defensive pleading. It seems that by the Irish County Courts' Act, personal service of process is not required upon a debtor: it is sufficient if the process is served upon any member of his family; and by the new Bill this rule as to substituted service is adopted without requiring any application to the Court.

The Irish Bill also proposes to effect various important alterations in matters which should be considered rather of law than of procedure. For example, it proposes, to render policies of insurance and other debts and *choses* in actions assignable, in such a manner that the assignee may sue upon them in his own name, so soon as he has registered his assignment and given reasonable notice to the debtor; that the Courts of Common Law should have the powers now exercised by the Court of Chancery with respect to lost bills, bonds, and other securities, and that an equitable title should be a sufficient answer to a party bringing an action of ejectment and relying upon the legal title only.

It is also proposed, to place the Courts of Law upon an equal footing with Courts of Equity in matters relating to the validity of wills, and to enable

Courts of Law to set aside injunctions granted upon an allegation of outstanding title; and generally to prevent what the Irish Solicitor-General somewhat figuratively described, as the abuse, by which "a suitor is driven, like a shuttlecock, from a Court of Equity to a Court of Law, and is sent into Chancery only that he may be enabled to go to Common Law."

The Irish Bill also professes to do what, if carefully and accurately done, is undoubtedly of great advantage, namely, to consolidate all the Statutes and Rules of Court relating to Common Law Procedure, so that within the four corners of an Act of Parliament the whole Law of Procedure in an action at law may be found.

Upon the practicability or merits of a measure, the knowledge of which is only derived from a popular statement of its provisions in Parliament, it would manifestly be premature to hazard any opinion. It is impossible not to admit, however, that the Legal Profession and the Public are deeply interested in the experiment about to be tried in the sister kingdom. It is, perhaps, desirable, that changes of such magnitude should be tried, in the first instance, in a division of the kingdom in which mercantile transactions are comparatively limited in number and small in amount; but if the system about to be introduced in Ireland operates beneficially, its extension to England can only be a question of time.

Indeed, it was manifest, as well from the observations of the late as of the present Attorney-General for England, in the debate on the second reading of the Irish Bill, that the Act of last Session (15 & 16 Vict. c. 76.) is not regarded by the lawyers in Parliament either as a complete or a satisfactory measure, and that further and greater changes are about to be proposed in the system of Common Law Procedure.

We concur with those who consider that the permanent interests of the Legal Profession are best consulted, not by encouraging piecemeal reforms, but those which remove *all* just grounds of complaint. The public should have free access to tribunals of the highest character, which ought no longer to be exposed to competition with inferior Courts, originally constituted upon the principle that a species of rude justice, promptly and inexpensively administered, was all that was required in Courts for the recovery of Small Debts.

## NEW RULES AND ORDERS IN BANKRUPTCY.

THE pressure upon our space of other claims of a comparatively urgent nature has prevented an earlier notice of the "Rules and Orders" made in pursuance of "the Bankrupt Law Consolidation Act, 1849," and which are to take effect from and after the 11th January, 1853. These Rules and Orders, which are signed by the senior and eight other Commissioners, and approved by Lord St. Leonards as Chancellor, amount numerically to 163, and are of so formidable a length as to render it inconvenient to transfer them in *extenso* to our pages. It is but just, however, to observe, that the Rules and Orders now published rescind all the Rules and Orders previously made from time to time in Bankruptcy, and that when they come into operation the Bankrupt Law Consolidation Act, 1849, and the Rules and Orders of October, 1852, together, will contain the whole code by which the administration of Justice in Bankruptcy is governed.

The "Rules and Orders" now promulgated, are classed under 23 distinct divisions, referring to the corresponding sections of the Consolidation Act, and are arranged in the following order:—

1. Definition of terms.
  2. Petition for adjudication of bankruptcy.
  3. Disputing adjudication of bankruptcy.
  4. Jurisdiction of the Court under sect. 12.
- Motions, petitions, and practice thereon.
5. Deposit of costs on appeal.
  6. Allowance of amendments.
  7. Removal of fiats issued before Nov. 1842.
  8. With respect to the chief and other registrars.
  9. Of the proceedings.
  10. Office copies of proceedings, under ss. 53 & 232.
  11. Duties of the Master.
  12. Proof of debts.
  13. Taking mortgagees' account and sale of property thereon.
  14. Bankrupt's balance sheet.
  15. Advertisement of certificate and appeal from allowance thereof.
  16. Audits.
  17. Summoning trader debtor.
  18. Arrangements under control of the Court.
  19. Arrangements by deed.
  20. Orders for payment of money and costs and execution thereon.
  21. Course of priority of payments out of the estate of a bankrupt, costs of petitioning creditor, and costs out of joint and separate estate.
  22. Composition after adjudication of bankruptcy.
  23. With respect to official assignees and their duties.

As may be inferred from the announcement, that former Rules and Orders are rescinded, a large proportion of the "New Rules and Orders" are in fact only a renewal of those previously in operation. For example, the rules regulating the proceedings relating to summoning a trader debtor, under sections 78 to 86 of the Bankrupt Law Consolidation Act (rules numbering from 68 to 88), are in terms a re-enactment of the rules dated the 12th November, 1842, and made under the Act, 5 & 6 Vict. c. 122, s. 70. So, the rules now published, "with respect to official assignees, and their duties," which exceed 40 in number, are, with a single exception, similar to those previously in force, the exception being the rule (No. 130), fixing the scale of allowance to be made to the official assignees,<sup>1</sup> and which may be considered in *one sense* an improvement, inasmuch as it renders the rate of allowance uniform, which has hitherto varied in the Courts of different Commissioners.

As most of our readers are aware, the Act of 1849 invested the Commissioners with much more extensive authority than had previously been conferred upon them, and the new rules have been framed mainly with the purpose of regulating the practice in reference to the proceedings upon which the jurisdiction has been increased or altered by the Legislature. In certain cases, however, in which the law was not materially altered by the Act of 1849, but where the practice before the several Commissioners was uncertain or varied, and it was deemed right to establish a fixed rule, the future practice will be regulated by the Code of Rules and Orders now promulgated.

In succeeding Numbers, it is proposed to print the rules which are new in substance as well as in form, together with such observations, explanatory or critical, as may be deemed useful. At present, we can only find space for the new rule relating to the *deposit of costs on appeal*, under sect. 12, and the much required rule which follows, authorising the Commissioners to make *amendments* in any particulars not material to the merits.

### "Deposit of Costs on Appeal."

"R. 29. That at or before the time of entering an appeal against a decision or order of the Court of Bankruptcy, the party intending to appeal shall (in any case not otherwise specially provided for) deposit with the chief registrar such sum, not being less than 10*l.*, and not exceeding 40*l.*, as the Commissioner whose

<sup>1</sup> Published *Leg. Obs.* Nov. 6, page 2.

order or decision is appealed from, or some other Commissioner of the same Court, shall direct, to satisfy, so far as the same may extend, any costs that the appellant may be ordered to pay, and in the absence of any directions as to the amount of deposit the sum of 20*l.* shall be so deposited. If it shall appear that there are several respondents in separate interests, the Commissioner, if he shall think fit, may order a separate deposit as to every such respondent."

*"Amendment.*

"R. 30. That in any proceeding before the Court, the Court, if it think fit so to do, may allow amendment in any particular or particulars in the judgment of the Court not material to the merits of the case, to be forthwith made, on such terms as to re-swearing (in case of affidavits when necessary) and as to payment of costs and postponement, or otherwise, as the Court shall think reasonable."

The authority which this rule sanctions the exercise of by the Commissioners is one that should reside in every Court, in order that justice may not be defeated by frivolous objections; and indeed, it has been suggested, that the rule might have been so framed as usefully to invest the Commissioners with a wider discretion.

## OATHS IN CHANCERY BILL.

THE Lord Chancellor's Bill, intituled "An Act relating to the Appointment of Persons to administer Oaths in Chancery, and to Affidavits made for Purposes connected with Registration," proposes to enact as follows:—

1. The persons now styled "Masters Extraordinary in Chancery" shall cease to be so styled, and they and all persons hereafter appointed to execute like duties by the Lord Chancellor shall be designated "Country Agents to administer Oaths in Chancery," and as such shall possess and exercise all such powers and discharge all such duties as now appertain to the office of Master Extraordinary in Chancery by virtue of any statute or order of the Court of Chancery or of the Lord Chancellor, or usage in that behalf, or otherwise.

2. It shall be lawful for the Lord Chancellor from time to time to appoint any persons practising as solicitors within 10 miles from Lincoln's Inn Hall to administer oaths in Chancery, and to possess all such other powers and discharge all such other duties as aforesaid; and such persons shall be styled "London Agents to administer Oaths in Chancery," and they shall be entitled to charge and take a fee of 1*s.* 6*d.* for every oath administered by them, subject to any order of the Lord Chancellor varying or annulling the same.

3. The fiat or document by which any such country agent or London agent as aforesaid shall be appointed shall bear a Chancery stamp

of 1*l.*, in lieu of the stamp of 5*s.* now required; but no other charge or fee shall be made or payable in respect of such appointment, or of anything requisite to be done in order to perfect the same; and it shall not be necessary that any such appointment should be published in the *London Gazette*.

4. Nothing herein contained shall abridge or lessen the power of the Lord Chancellor as it now exists to appoint fit persons to take oaths in Chancery, or to regulate the fees to be taken by them; and where any Act of Parliament refers to the Masters Extraordinary in Chancery, or to their powers or duties, the reference shall be held to apply to and include the officers or agents to whom the aforesaid new styles are hereby given, or their powers or duties, as the case may be.

5. That all affidavits, declarations, and affirmations to be used before any registrar or other officer of any registry office in Great Britain or Ireland, for any purpose connected with registration of deeds or wills, under the authority of Parliament, may be sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Court, Judge, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and all registrars and other officers of any such registry office shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul which shall be attached, appended, or subscribed to any such affidavit, declaration, or affirmation, or any other document; and that the enactments contained in the 23rd and 24th sections of the 15 & 16 Vict. c. 86, shall be deemed to be incorporated herein as effectually as if the same enactments were expressly re-enacted in this Act and applied to registry offices.

## FEE STAMPS PRACTICE.

MUCH inconvenience has been sustained both by the officers of the Court of Chancery and the Solicitors, in carrying into effect the Statute and Rules of Court relating to the payment of Fees by Stamps.

It is, doubtless, of great importance that fraud or mistake in the collection of fees should be prevented; but it is scarcely less important that the precautionary measures in this respect should not delay the suitors or increase their expense.

Now, we understand that in regard to affidavits, office copies, and other proceedings, which have not a *fixed* stamp, but are dependent on the length of the document, or the number of the deponents, much in-

convenience to the practitioners and delay of business are occasioned. We understand that suggestions will shortly be laid before the Lord Chancellor, by the Incorporated Law Society and by the officers of the Court, for remedying the inconvenience complained of; and it cannot be doubted that the Lord Chancellor will give his best attention to the subject; and indeed we understand that his lordship has requested to be furnished with suggestions for his consideration.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMMONS INCLOSURE ACTS EXTENSION.

15 & 16 VICT. c. 79.

RECITING 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83; 14 & 15 Vict. c. 53.

No lands to be inclosed without the previous authority of Parliament; s. 1.

Outfall drains. Drains, &c., may be made in lands out of the parish in which the lands to be inclosed are situate; s. 2.

Remedy in case of nonpayment of expenses; s. 3.

Sale of land directed to be inclosed. Meeting to consent to sale; s. 4.

Meeting of persons interested to determine appropriation of surplus; s. 5.

Resolutions at such meeting to be confirmed by Commissioners; s. 6.

Second meeting may be held; s. 7.

Appropriation of surplus if resolutions disallowed; s. 8.

Award to be made; s. 9.

Award not to be impeached; s. 10.

Sales how to be made; s. 11.

Application of purchase-money; s. 12.

Obtaining possession of encroachments. Expenses; s. 13.

Village greens and allotments for exercise and recreation shall not be fenced in certain cases; s. 14.

Report to be sent to the Commissioners within one month from allotments being staked out. Possession not to be given without an order of the Commissioners; s. 15.

As to the allotment of fruit trees; s. 16.

Deposit of orders of exchange and partition in certain cases; s. 17.

Commencement of rent-charge out of labouring poor allotments; s. 18.

Rent-charge may be sold towards expenses; s. 19.

8 & 9 Vict. c. 118, s. 54, need not be specially referred to on claims; s. 20.

Allotments set out under local acts may be exchanged; s. 21.

Application of compensation for common rights paid under the Lands' Clauses' Consolidation Act, 1845; s. 22.

In cases of boundary appeal, Commissioners may order production of maps, &c. Costs of Appeal; s. 23.

Extending provisions of firstly-recited Act as to bond in cases of boundary appeal; s. 24.

Power to recover costs in cases of feigned issue; s. 25.

Costs incurred by Commissioners to be deemed part of inclosure expenses in certain cases; s. 26.

Fee to clerk of the peace upon the deposit of copy of inclosure award; s. 27.

The word "parish" to include district having separate surveyor of highways; s. 28.

Confirmed awards and orders may be corrected; s. 29.

Copy of map may be annexed to the award; s. 30.

Land held under separate titles, &c., by the same person may be partitioned; s. 31.

Power to effect partitions and exchanges where parties interested in land, subject matter of partition, and also in the entirety of any land; s. 32.

Penalty where stock found on regulated pastures; s. 33.

Short title; s. 34.

This Act to be deemed part of recited Acts; s. 35.

The following are the sections of the Act:—

An Act to amend and further extend the Acts for the Inclosure, Exchange, and Improvement of Land. [30th June, 1852.]

Whereas Acts were passed in the Session of Parliament holden in the 8 & 9 Vict. c. 118, in the 9 & 10 Vict. c. 70, in the 10 & 11 Vict. c. 111, in the 11 & 12 Vict. c. 99, in the 12 & 13 Vict. c. 83, and in the 14 & 15 Vict. c. 53: And whereas it is expedient that the provisions of the said Acts should be amended and further extended: Be it enacted as follows:

1. Notwithstanding the provisions in the said firstly-recited Act, it shall not be lawful for the Inclosure Commissioners after the passing of this Act to give notice of their intention to proceed with the inclosure of any lands without the previous direction of Parliament, and no land shall be inclosed under the said recited Acts and this Act without the previous authority of Parliament in each particular case, as in the said firstly-recited Act provided with

reference to waste land of any manor on which the tenants of such manor have rights of common, and other lands therein particularly mentioned.

2. For the purpose of obtaining or improving the outfall of any drain or watercourse in land to be inclosed, the valuer acting in the matter of such inclosure shall be deemed to be the person interested under the provisions of the Act passed in the Session of Parliament holden in the 10 & 11 Vict. c. 38, in the land to be inclosed; and it shall be lawful for such valuer to direct by his award by whom and in what manner such outfall shall be maintained and repaired; and it shall be lawful for such valuer to set out and make also to provide for the proper repair, cleansing, and maintenance of drains, watercourses, embankments, tunnels, bridges, and any other necessary works in or over any land other than the land the subject matter of such inclosure, notwithstanding such land may not be in the parish or respective parishes in which the land to be inclosed may be situate: Provided always, that the same consent shall be required as if the said land had been in the parish or respective parishes in which the land to be inclosed is situate; provided also, that when such inclosure is completed the valuer shall cease to be deemed the person interested as aforesaid.

3. The service of the notice by the said firstly-recited Act required to be given by the valuer, that the proportion of expenses payable by any person is in arrear, and requiring payment thereof, may be effected in such manner as is therein directed, or by leaving the same with the agent of the person liable to pay such proportion of expenses, or at the usual place of abode of such agent; and if the proportion of expenses so in arrear, together with lawful interest and 2s. 6d. for the costs of the preparation and service of such notice as aforesaid, shall not be paid on the expiration of 30 days after service of such notice, it shall be lawful for the valuer to recover the same in such manner as the proportion of expenses and interest are by the said firstly-recited Act authorised to be raised, or, with the approbation of the Commissioners, to sell the whole or such part of the allotment made to such person so in arrear as shall be sufficient to defray such expenses, interest, and costs, and the expenses of making and completing such sale.

4. After the determination of the claims in the matter of any inclosure, and before the valuer shall have divided and allotted the lands to be inclosed, it shall be lawful for the Commissioners, upon the application in writing of persons, the aggregate amount of whose interests in the land proposed to be inclosed shall not be less in value than two-thirds of the whole interest in such land, and who shall not be less in number than two-thirds of the persons whose claims have been allowed by the valuer, and also upon the application in writing of the other persons (if any) whose consents may be necessary under the provisions of the hereinbefore firstly-recited Act, in case the

said Commissioners shall be of opinion that the sale of such lands in whole or in part, but so nevertheless that the land so proposed to be sold shall not exceed 50 acres, would be expedient, by an order under their seal, to authorise the sale thereof in whole or in part, and thereupon all the provisions of the said firstly-recited Act as to the sale of land for the expenses of an inclosure, the conveyance thereof, and the receipt of the purchase-money shall be applicable to the sale of such land: Provided also, that before any such sale shall be made, it shall be approved of by the persons whose claims have been allowed by the valuer, at a meeting convened by the Commissioners for the purpose of considering the same, and the majority present at such meeting shall bind the minority and all absent parties.

5. After the making of such order as aforesaid, and of a sale in pursuance of such order, the Commissioners shall call a meeting, in such manner and with such notice as to them shall seem fit, of all persons whose claims have been allowed by the valuer, and at such meeting the majority in respect of interest present at such meeting shall determine, by resolutions to be passed at such meeting, how any surplus of such purchase moneys as may remain unappropriated after the payment of all such expenses as the Commissioners may certify as proper expenses in the matter of such inclosure and in the proceedings attendant thereon or incident thereto or to the sale of such lands shall be appropriated; and it shall be lawful for such meeting, by resolutions to be passed in the manner aforesaid, to appropriate such surplus of such purchase-moneys to the endowment of schools, the construction or maintenance of bridges, highways, school-houses, drains, watercourses, or any other works or objects whatever of public utility, and to provide in what manner such moneys shall be expended, invested, or managed for the purposes to which such moneys are so appropriated by such resolutions.

6. Provided that no resolutions passed at any such meeting shall be of any force or effect until or unless the same shall be confirmed and allowed by the said Commissioners under their seal.

7. If the said Commissioners shall vary or disallow any resolutions so passed as aforesaid, they shall, as soon as conveniently may be, call a second meeting of persons whose claims have been allowed by the valuer, which second meeting shall be attended by an assistant Commissioner, who shall preside thereat; and at such second meeting the resolutions passed at the first meeting may, by a like majority of the persons present interested in respect of value, be varied, altered, or rescinded, and other resolutions may be passed for appropriating such surplus monies for the purposes hereinbefore mentioned; provided that such resolutions shall in like manner be of no force or effect unless confirmed and allowed by the said Commissioners under their seal.

8. In case the said Commissioner shall dis-

allow the resolutions passed at such second meeting, or if at any meeting so to be called as aforesaid no resolution to the effect aforesaid shall be passed, then such surplus of such purchase-moneys shall be expended from time to time in lieu or in aid of the rate for the maintenance or repair of the highways of the parish or parishes within which such land liable to be inclosed is situate, and in case the said lands shall be situate in more than one parish then the division of such surplus moneys between the said parishes shall be proportioned to the quantity of the land liable to be inclosed which is situate within each parish.

9. After the confirmation of such resolutions as aforesaid the said Commissioners or an assistant Commissioner shall frame an award, in such manner and with all such formalities as are required by the said first-recited Act for a final inclosure award, and thereby, after reciting the sums allowed by the said Commissioners, and paid for expenses incurred in the matter of the inclosure, and in the proceedings attendant thereon or incident thereto, or to the sale of such lands, or to the improvement thereof for purposes of sale or otherwise, shall award and direct the appropriation of the surplus moneys, if any, in such manner as to carry out the true intent and meaning of any resolutions passed and confirmed as hereinbefore-mentioned, or in default of any such confirmed resolutions, then of the appropriation of such surplus in the manner hereinbefore provided by this Act.

10. After the confirmation of any instrument purporting to be an award made and confirmed under the provisions of this Act, such instrument shall be unimpeachable, and shall be in all respects valid and operative as an award for all the purposes aforesaid.

11. The whole of the said expenses, interest, and costs, or so much and such parts thereof as shall be unpaid, or shall not have been recovered under the provisions of the said firstly-recited Act, in case the valuer shall have proceeded for the recovery thereof as therein authorised, may be raised by such sales, which shall be made by the valuer, with the approbation of the said Commissioners, in the same manner and subject to the same regulations as are in the said firstly-recited Act prescribed in respect of the sale of part of the land subject to be inclosed towards defraying the expenses of the inclosure; and every part of an allotment for which the full purchase-money shall be paid shall be conveyed by the Commissioners, at the expense of the purchaser, as he shall appoint, and shall be inclosed, and held by such purchaser in severalty, and any such conveyance may be to the effect set forth in the schedule to the said Act, and shall be evidence of the regularity of the sale in pursuance of which such conveyance shall be made: Provided always, that nothing herein contained shall enable the Commissioners to convey any allotments set out as copyhold or customary as freehold, but such copyhold or customary allotments shall be held by the purchaser

thereof by, under, and subject to the same rents, suits, and services as such allotments would have been held in case no such sale had been made.

12. The receipt of the Commissioners shall be a sufficient discharge to the purchaser for the said purchase-money; and such purchase-money shall be applied by the Commissioners in or towards defraying the costs, interest, and expenses for raising which such sale shall have been made, and the surplus (if any) shall be paid to or for the benefit of the parties whose allotments, or any part thereof, shall have been sold; and the shares of such of them as shall be tenants in fee simple, free from incumbrances, shall be paid to them respectively, and the shares of the other proprietors of such surplus money shall be applied and disposed of in such and the same manner as the surplus of any moneys arising from the sale of part of an allotment for raising money for expenses is by the said firstly-recited Act directed to be applied and disposed of.

13. When any person by whom any encroachment or inclosure, of whatever value, which under the said firstly-recited Act shall be deemed to be parcel of the land subject to be inclosed, shall be actually occupied, shall neglect or refuse to quit and deliver up possession of the same, or any part thereof, to the valuer acting in the matter of the inclosure, within one calendar month next after the determination of claims under the said firstly-recited Act, the possession thereof may be recovered by such valuer, under the provisions of the Act passed in the Session of Parliament holden in the 1 & 2 Vict. c. 74, in such and the same manner as if such occupier of an encroachment or inclosure were the tenant of a house, land, or corporeal hereditament the possession of which is recoverable under such last-mentioned Act, whose term or interest had ended, and the valuer were the landlord of the said premises: Provided always, that the form of notice of valuer's intention to apply to Justices to recover possession, "Complaint before Two Justices," and "Warrant to Peace Officer to take and give Possession," set forth in the schedule to this Act, shall be substituted for the forms set forth in the schedule to the said last-mentioned Act; and all costs and expenses incurred by the valuer in the recovery of the possession of encroachments or inclosures, or incident thereto or arising therefrom, shall be deemed expenses in the matter of such inclosure.

14. Notwithstanding the provisions in the said firstly-recited Act with reference to the fencing of allotments for exercise and recreation, and of town greens and village greens allotted for such purposes, it shall be lawful for the Commissioners, by an order under their seal, in such cases as they shall see fit, to direct that such allotments, town greens, and village greens respectively shall be distinguished by metes and bounds, but not fenced.

15. The valuer in the matter of any inclosure shall, within one calendar month next



after the division of the land to be inclosed and staking out of the allotments, send to the office of the Commissioners his report, with such a map thereunto annexed as is required by the said firstly-recited Act, unless such time be extended by the Commissioners by an order under their seal; and it shall not be lawful for the valuer to direct the allotments to be entered upon by the persons for whom the same shall be intended until he shall be authorised so to do by an order under the seal of the Commissioners.

16. Fruit trees standing and growing upon any land to be inclosed shall not be dealt with as timber trees and other trees are by the said firstly-recited Act directed to be dealt with, but shall be allotted and go along with the land whereon they respectively stand, and shall be deemed the property of the several persons to whom the same land shall be respectively allotted; and in estimating the value of such allotments the valuer shall make such allowance for the increased value of the land by reason of the fruit trees standing and growing thereon as he shall deem just and reasonable.

17. In any case of division of intermixed land, exchange, or partition in which it shall appear to the Commissioners from the number of persons interested in the subject-matter of the division, exchange, or partition, or the nature of their interests, that the direction in the said recited Acts that a copy of the order under the seal of the Commissioners shall be delivered to each of the parties upon whose application such order shall be made are inapplicable, it shall be lawful for them, instead of delivering a copy of such order to each of such parties, to direct by an order under their seal that copies shall be deposited in such and the same manner as copies of an award in the matter of an inclosure under the said Acts are directed to be deposited, and thereupon all the provisions in the said firstly-recited Act relating to the deposit, custody, and inspection of copies of such awards, and for the furnishing of copies of and extracts therefrom, shall be applicable to copies of such orders of division, exchange, and partition respectively: Provided always, that the Commissioners shall, upon the request and at the cost of any person upon whose application such order was made, furnish him with a copy of the order sealed with their seal.

18. Notwithstanding the provisions of the firstly-recited Act, it shall be lawful for the valuer, with the approbation of the Commissioners, by his award in the matter of any inclosure, to direct that the first half-yearly payment of a rent-charge, payable out of an allotment for the labouring poor shall be made on any 1st day of July or 1st day of January, not being less than six months nor more than three years from the confirmation of such award; and in default of such direction the first half-yearly payment of such rent-charge shall be made as directed by the said firstly-recited Act.

19. It shall be lawful for the valuer, in pur-

suance of instructions duly given in that behalf, to sell any rent-charge payable out of allotments for the labouring poor for the purpose of raising all or any part of the expenses of the inclosure; and such rent-charge shall be sold and conveyed in such and the same manner as if the same were land sold under the said firstly-recited Act for payment of the expenses incident to an inclosure.

20. Upon the hearing of any claim to a right of common or other right in the matter of an inclosure, the claimant shall have the full benefit of the provisions of the Act passed in the Session of Parliament holden in the 2 & 3 Wm. 4, c. 71, and of the 54th sect. of the firstly-recited Act, without any special reference being made thereto in such claim.

21. Where any allotment has been made in trust or otherwise under any inclosure award for any public or parochial purpose, or for the benefit of the inhabitants or others within any parish or manor, and it shall appear to the said Commissioners to be no longer necessary, convenient, or suitable for the purposes for which the same shall have been made, it shall be lawful for the Commissioners, upon the application in writing of the churchwardens and overseers of the poor of the parish in which such allotment is situated, or the trustees for the time being of such allotment, and of the person interested in any land or other subject matter of exchange under the said recited Acts or either of them which he may be willing to give in exchange for such allotment, in case they shall be of opinion that such exchange would be mutually beneficial, to cause to be framed, and to confirm, an order of exchange of such allotment for such other land or other subject matter of an exchange as aforesaid, and all the provisions of the said recited Acts applicable to exchanges shall extend and be applicable to any such applications for exchange: Provided always, that it shall be lawful thereby to declare any new trusts, if the same shall have been approved of by a majority of the persons for whose benefit such allotment as aforesaid was set out present at a meeting convened by the Commissioners for the purpose of considering the same.

22. Where any money shall have been or may hereafter be paid to a committee under "The Lands' Clauses' Consolidation Act, 1845," or under any railway or other special Act by which money may have been directed or authorized to be paid to a Committee, as compensation for the extinction of commonable or other rights, or for lands being common lands or in the nature thereof, the right to the soil of which may have belonged to the commoners, and such committee shall be of opinion that the provisions of such Act for the apportionment thereof cannot be satisfactorily carried into effect, such committee may make application in writing to the Commissioners to call a meeting of the persons interested in such compensation money for the appointment of trustees of such compensation money and for the investment thereof, and for the application of the interest

and annual produce thereof to such purposes for the benefit of the persons interested therein as the Commissioners shall approve; and if the said Commissioners shall think fit to proceed with such application they shall call a meeting accordingly, and the decision of the majority in number and the majority in respect of interest of the persons present at such meeting shall bind the minority and all absent parties: Provided always, that if no instructions shall be resolved upon, or in case the Commissioners shall deem such instructions unjust or unreasonable, they may, by an order under their seal, give such instructions for the investment of such compensation money and for the application of the income thereof as they shall think fit; and such order under the seal of the Commissioners, or the order approving of such instructions as aforesaid, shall contain provisions for the appointment of new trustees from time to time, and copies of such order shall be deposited and kept in like manner as copies of an award are by the firstly hereinbefore recited Act directed to be deposited and kept, and the said committee shall be absolutely discharged from all liability in respect of such compensation money upon payment thereof to the said trustees, who shall, out of such money, in the first place pay and discharge all expenses which may be incurred by the said Commissioners in respect of or in any way incident to such application and order, and apply or invest the surplus thereof in such manner as shall by such order be authorized or directed.

23. The said Commissioners, or any assistant Commissioner specially appointed by them, in cases of appeal to a jury on questions of boundary, may, if they or he shall see fit, order the production of any terriers, maps, plans, and surveys, or copies thereof, touching the matter in question; and all costs, charges, and expenses properly incurred by the said Commissioners and assistant Commissioner, or by the valuer, or any other person or persons, in supporting the award and decision of the said Commissioners or of the assistant Commissioner, and incidental thereto, including the costs, charges, and expenses of producing, and of the making or procuring and producing office or other copies or extracts of maps, surveys, or other documents, shall be included in the costs of such appeal, and be payable and recoverable in like manner as if the same were expenses of witnesses under the firstly hereinbefore recited Act.

24. The provisions of the said firstly-recited Act, whereby a bond with two sufficient sureties is directed to be entered into by any person requiring a jury to be summoned to try any question relating to boundaries for payment of the costs and expenses therein mentioned, shall extend to and include all costs, charges, and expenses which may be properly incurred by the said Commissioners and assistant Commissioner, or by the valuer, or any other person or persons in supporting the award and decision of the said Commissioners or of the

assistant Commissioner, and incidental thereto, in case such decision and award shall be confirmed by the jury summoned to try the same under the said Act.

25. Where any determination of the Commissioners or assistant Commissioner shall be removed by writ of *certiorari* under the provisions of the said firstly-recited Act into her Majesty's Court of Queen's Bench, and the same shall be confirmed, such Court may make such rules and orders therein as to the costs, charges, and expenses incurred therein, or in any feigned issues thereon, by the Commissioners, or by the person or persons supporting the same, as may appear just and reasonable, notwithstanding the same may exceed the amount of the recognizance required by the said Act to be entered into, and the like execution may be had for the same, as if such costs had been recovered upon a judgment of record of the said Court.

26. In every case of such removal by *certiorari* of the determination of the Commissioners or assistant Commissioner, and in every case of feigned issue to which the said Commissioners or assistant Commissioner shall be a party, the costs, charges and expenses incurred by them or him in supporting the determination or award in dispute, as well as the amount of any costs paid by them or him to any other party or parties pursuant to the decision of the said Court, shall be deemed to be part of the expenses of the inclosure to which such determination or award shall relate, and shall be paid by such parties and in such proportions as the said Commissioners or assistant Commissioner shall direct, subject nevertheless to the provisions hereinbefore contained.

27. And whereas it is doubtful whether any or what fee is payable to the clerk of the peace upon the deposit with him of a copy of an inclosure award under the provisions of the said firstly-recited Act: Be it enacted, that the fee upon such deposit shall be the sum of 10s. and no more.

28. And whereas by the said fifthly-recited Act power is given to the valuer in the matter of any inclosure to declare by his award how much and which part of any of the lands to be allotted and divided or dealt with by such award, or of any roads passing over or through the same or any part thereof, shall be and be deemed to be situate in any parish or parishes in which any of the land so to be divided, allotted, or dealt with shall be situated: Be it enacted, that the words "parish" or "parishes" hereinbefore recited shall include and also be intended to mean district or districts having a separate surveyor or surveyors of the highways.

29. In case of any fraudulent or other error or omission in any award or order confirmed by the Commissioners, the said Commissioners may, by an order under their hands and seal, by indorsement or otherwise, correct such error or supply such omission, and such order shall be ingrossed, and, where not indorsed as aforesaid, be deposited with the original award or order, and shall thenceforth be and be

deemed to be part thereof to all intents and purposes; and all the expenses incident thereto shall be paid by the party (if any) who shall have requested the Commissioners to make and execute the same, or by his executors or administrators.

30. The Commissioners may, if they shall think fit, direct the valuer to annex to his award, in substitution for the map referred to by his report, a copy thereof, of which the accuracy shall be certified under their seal.

31. Any person interested in any land or other subject-matter of partition in undivided shares held under separate titles, or for distinct and separate interests, or subject to separate charges or incumbrances, may effect a partition of the same in such and the same manner as if different persons had been interested therein.

32. Where any person or persons interested in any undivided parts or shares of any land or other subject-matter of partition, within the meaning and intent of the said recited Acts, or any of them, and also interested in the entirety of any land or other subject-matter of exchange within the meaning and intent of the said recited Acts or any of them, shall be desirous at one and the same time of effecting a partition and exchange thereof, it shall be lawful for such persons so desirous of effecting such partition and exchange to agree between themselves to effect the partition and exchange, in such a manner and in such proportions as they shall think fit, so that the land to be allotted to such person or persons in severalty, by means of such partition, together with the land to be taken in exchange by such person or persons, shall be a fair equivalent in value for the land so to be allotted in severalty to and the land to be taken in exchange by the other person or persons; and the Commissioners may, upon the application in writing of the persons so interested, direct inquiries whether such arrangement would be beneficial to the owners of such lands and such undivided parts or shares respectively, and in case they shall be of opinion that such arrangement would be beneficial, and that the terms thereof are just and reasonable, they shall, unless notice of dissent be given in the manner provided by the said several recited Acts, cause to be framed and confirmed an order of partition and exchange, with a map or plan thereunto annexed, in which order shall be specified and shown the lands allotted and awarded to each party under the said arrangement; before making such order of partition and exchange, the Commissioners shall ascertain, and shall in such order specify, what portions of the lands so to be awarded and allotted to each or any party is equivalent in value to the undivided part or share of such party in the lands partitioned, and the said portions so ascertained and specified shall be taken and deemed to be so awarded and allotted under the partition: and the said Commissioners shall also ascertain, and shall in such order specify, what portion of the lands so to be awarded and allotted to each or any party is equivalent in value to the land given in ex-

change by such party, and such portion so ascertained and specified shall be deemed to be so awarded and allotted by way of exchange; and the land awarded and allotted by such order to each party shall be held in the following manner, viz., so much thereof as by the said order shall be awarded and allotted under the partition shall be and enure to, for, and upon the same uses, trusts, intents, and purposes, and subject to the same conditions, charges, and incumbrances, as the undivided part or share of the party would have stood limited or been subject to in case the said order had not been made, and so much of the said land as by the said order shall be awarded and allotted by way of exchange shall be and enure to, for, and upon the same uses, trusts, intents, and purposes, and subject to the same conditions, charges, and incumbrances, as the land given in exchange would have stood limited or been subject to in case such order had not been made.

33. Any person having any stock or animals on any regulated pasture contrary to the regulations of such pasture, on being convicted thereof before two justices of the peace having jurisdiction in the county or place shall forfeit and pay for and in respect of each head of stock or animal found in such regulated pasture such sum of money, not exceeding 5*l.*, as such justices shall think proper to inflict, by way of penalty, and such sum shall be paid to the field reeve, to be applied by him in aid of the rates by the firstly hereinbefore recited Act authorised to be raised on the owners of stints in regulated pastures; and the provisions of the Act of the 7 & 8 Geo. 4, intituled "An Act for consolidating and amending the Laws in England relative to malicious Injuries to Property," concerning the prosecution of offenders punishable on summary conviction under such Act, and the form of such conviction, and concerning the cases of a summary conviction under such Act, where the sum which shall be forfeited for the amount of injury done shall not be paid, and all other provisions of such Act consequent upon or in relation to such proceedings and conviction, shall be applicable to the offences under this Act, and the prosecution and conviction for the same respectively, save that any matter by the said Act directed to be done by the justices shall be done by two justices as aforesaid: Provided always, that no remedy which any field reeve might otherwise have under the firstly hereinbefore recited Act, or otherwise, shall be in any manner prejudiced or affected by the provision last hereinbefore contained.

34. In citing this Act, the said recited Acts, and the Acts passed in pursuance of the annual or any special reports of the Commissioners, or any or either of them, in other Acts of Parliament, in conveyances, documents, and legal instruments, it shall be sufficient to use the expression, "The Acts for the Inclosure, Exchange, and Improvement of Land."

35. This Act shall be taken to be a part of the said recited Acts, and be construed therewith.

## CANDIDATES WHO PASSED THE EXAMINATION,

*Michaelmas Term, 1852.*

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Ash, John George Hele	William Gorham; Francis James Ridsdale
Aveline, Henry Thomas	John James
Ball, Charles	John Walker
Barnes, Arthur	Edward Bond
Baty, Isaac	Charles Head
Bayley, Charles Henry	Elisha Caddick
Blegg, Michael Ward	John Michael Blagg
Blick, John	Samuel Tombs, jun.
Borini, John	Michael Davis, jun.
Borradaile, Charles	Henry Denton
Bowman, Joseph, jun.	Richard Armitstead; Charles Holme Bower; Thomas Holme Bower
Bunny, Edward William, B.A.	Jere Bunny
Burton, Edmund Charles, A. M.	Edmund Singer Burton
Butler, Josiah	Joseph Thompson
Cant, Thomas Gibson	John Jameson
Carter, William	Frederick Smith; Charles Stenning
Cavell, Edward	Smith and Son
Child, Mark	William Brignal
Clare, William	George James Duncan
Clark, Henry	John Bush
Clarke, Frederick	Charles Few, jun.
Cobby, Cecil	Charles Cobby
Cowley, George Littlewood	George Molini Cowley
Cranwick, Matthew	John Shackleton
Creswick, Nathaniel, jun.	Henry Pashley
Cross, John	James Cross
Davies, Edmund, jun.	Edmund Davies
Dixon, Albert	William Dixon
Draper, Edward	Hastings Dare Draper
Dutton, James Roger	John Shaw Leigh; William Eaton
Eastham, John	Robert Trappes
Edwin, William	Michael Cooper; George Ade
Ellis, George	Charles Naylor
Fitch, George William	Clement Francis
Foster, Francis Gostling	Sir William Foster, Bart.
Franklin, James	Michael Stooks
Frend, Edwin	Thomas Norman Wightwick
Frere, Horace	Charles John Palmer
Fuller, Robert Good	James Gudgeon
Gee, William	William Gee; Robert Gee
Gibson, Henry	William Gibson
Goodman, William Benjamin	Charles Rollings
Goodwin, Thomas	John Monckton
Green, William Bowles	William Pepper Bowles
Grundy Charles	John Willcutt Cowley; Robert George Chipper- field; Leonard Hicks.
Gutteridge, Weichsel Frederic	Henry Vallance
Gwyn, John Thomas	John Budden Jeffries
Hall, William Champaign	Bury Victor Hutchinson
Hayman, Philip Charles	Henry Charles Trenchard; Henry Seymour West- macott
Hockley, Edward	Francis Herbert
Howell, Nathaniel	Archibald Low
Huggins, William	Frederick Every; William Henry Murch
Jennings, Edward Billett	Thomas Townsend Dibb
Kingsford, Montague	Henry Kingsford
Landor, Robert	Walter Landor
Laxton, Thomas, jun.	James Atter
Lee, Thomas Edward	Henry Wellington Vallance
M'Gee, Francis William	William Foster
Maclure, Bowman	Thomas Alley Jones
Matthews, James Bogle Denton Graham	Daniel Cornthwaite
Mawson, William Willmott	Thomas Taylor
Meredith, Edward William	Charles Meredith
Metcalfe, Robert, B. A.	Orlando Hyde
Meyler, Thomas	Robert Wilton
Miller, Mark Benjamin	Mark Blowers Miller
Mossman, George Robert, jun.	George Robert Mossman

## Names of Candidates.

## To whom Articled, Assigned, &amp;c.

Neale, Charles Lanchester	•	•	•	•	William Clarke; Robert Eagle Clarke
Norris, Robert, jun.	•	•	•	•	Robert Norris, sen.
Owen, Meiler	•	•	•	•	William Owen
Owston, Hiram Abiff	•	•	•	•	George Toller
Parker, Arnold	•	•	•	•	Thomas James Parker
Parker, James	•	•	•	•	Robert Cheere
Pownall, Henry Smith	•	•	•	•	William Pownall
Purchas, James Bishop	•	•	•	•	William Powell Hooper
Robinson, William Arthur	•	•	•	•	George Holmer
Rowley, James Campbell	•	•	•	•	Alexander Butler Rowley
Rutter, George Oswald	•	•	•	•	Oswald Milne; William Smalley Rutter
Salmon, Thomas William	•	•	•	•	William Worship
Sankey, Herbert Tritton	•	•	•	•	Robert Sankey; William Pain Beecham
Scott, George William	•	•	•	•	James Scott
Sheppard, Thomas Pollett	•	•	•	•	Arthur John Knapp
Smale, Arthur William	•	•	•	•	Charles Smale
Smith, Edward Hart	•	•	•	•	Edmund William Paul; John Arthur Buckley
Stacey, William	•	•	•	•	William Henry Trinder
Stockwood, John	•	•	•	•	William Edmondes
Stone, William Way	•	•	•	•	Joseph Rose; Richard Rose
Stopher, William	•	•	•	•	John James Peddell
Stuckey, Joseph Fry	•	•	•	•	James Templer
Talbot, Frederic	•	•	•	•	William Talbot
Teebay, Richard	•	•	•	•	John Yates
Thornley, James Jonathan	•	•	•	•	Richard Wormald; Samuel Higginbotham; Samuel Shuttleworth
Tindell, William Frederick	•	•	•	•	Michael Cooper; George Ade
Turner, Hubert Francis	•	•	•	•	William Turner; George Mounsey Gray
Tweed, Frederick William	•	•	•	•	John Thomas Tweed; George Tash Tweed
Vassall, Robert Lowe Grant	•	•	•	•	Alfred Cox; John Smale Torr
Venn, Francis	•	•	•	•	William Shuttleworth
Vivian, Charles Augustus, B.A.	•	•	•	•	John Vivian
Wade, John Henry	•	•	•	•	John Rawson
Walker, Joseph	•	•	•	•	Charles Preston; Thomas Harvey
Waller, Robert	•	•	•	•	Deakin and Dent
Warner, George Daniel	•	•	•	•	Edmund Boyle Church
Waugh, George, jun.	•	•	•	•	George Waugh, sen.; Richard Edmunds
Weekes, Charles Henry	•	•	•	•	George Wells Snell; John Vickry Bridgman
Wheldon, Robert, jun.	•	•	•	•	John Wright; James Lamb Barker
Wheldon, Thomas Robert	•	•	•	•	Robert Wheldon
Wilkinson, Matthew	•	•	•	•	Nelson Wilkinson
Wilton, Robert Plydall	•	•	•	•	Robert Wilton; Philip Stapleton Humberstone
Yewdall, George	•	•	•	•	John Lofthouse; Robt. Barr; John Everard Upton

## SELECTIONS FROM CORRESPONDENCE.

## COUNTY COURTS.

ACCORDING to the principle enunciated by the Lord Chancellor, that the expenses of the administration of Justice should be borne by the country, I am at a loss to understand why the principle should not be carried out so as to extend to the County Courts,—the fees in which are enormous,—in many instances far exceeding the disbursements out of purse in the initiatory proceedings in the Superior Courts. I trust the amount of these fees will attract the attention of his lordship. CRVIS, A.

## ECCLESIASTICAL COURTS.

These Courts seem to be at length doomed. My attention has lately been called to the proceedings of certain practitioners there, who, by means of touters, constantly on the look out, as crimps induce sailors to resort to those Courts for the recovery of their wages without any previous demand. The enormity has become so great that some thousands a year are realised by some of the worthy practi-

tioners in this *honourable* avocation. The owners of ships are most injuriously thereby subjected to enormous fees, for which the Courts are so justly celebrated. Whether a wholesome check could not be put on their rapacity by a rule of Court that no proceedings should be available until seven days' notice and demand was delivered to the debtor, remains to be seen. ONE, &c.

## LAW OF DIVORCE.

As it seems some important alterations in the Law of Divorce are in contemplation, I take leave to submit the propriety of assimilating the law so as to give the wife the same power to obtain a divorce against the husband for adultery as the husband now possesses against the wife. CRVIS.

## ALLOWANCE OF PROPERTY TAX ON LOANS.

A. gives to B. a note of hand for 1,000*l.* payable at 12 months, with 5*l.* per cent. interest. Is A. entitled to deduct the property or income tax on paying it? A.

## NOTES OF THE WEEK.

### QUEEN'S BENCH SITTINGS.

THE Adjournment Day for the trial of Causes in London, is fixed for *Wednesday*, December the 8th.

### COMMON PLEAS SITTINGS.

The Adjournment Day for the trial of

Causes in London, is fixed for *Friday*, December 10.

### LAW APPOINTMENT.

Mr. Arthur Bentley Todd, of 37, Lower Baggot Street, Dublin, has been appointed Crown Solicitor for Roscommon, Leitrim, and Sligo, in the room of Mr. Peter M'Keogh, deceased.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

Nov. 20.—*Barrington v. Liddell*—Appeal allowed from Vice-Chancellor Turner.

— 24.—*In re Bath Charities*—Part heard.

### Lords Justices.

*In re Marygold, ex parte Barlow*. Nov. 5, 1852.

**BANKRUPT. — ORDER FOR SALE OF STOCK IN TRADE MORTGAGED BY BILL OF SALE.**

The Commissioner had refused to make, on an *ex parte* application of the assignees, an order for the sale of the stock in trade and effects of a bankrupt which had been mortgaged by bill of sale, and an order was also refused on the mortgagee's appearing and the goods having been taken possession of before the adjudication and sold. An appeal, on behalf of the assignees, therefrom was dismissed with costs, with liberty to them to apply for their allowance out of the estate. And the Court intimated that the Commissioner should make the order for a sale *ex parte*, without prejudice to any question.

THIS was an appeal from Mr. Commissioner *Daniell*. It appeared that the assignees had applied, in accordance with the decision of the Court of Exchequer in *Heslop v. Baker*, 6 Exch. R. 740, for an order to sell the stock in trade and effects as in the reputed ownership of the bankrupt at the time of his bankruptcy. The Commissioner having refused the order on the ground that the goods had been mortgaged by bill of sale, and that no notice of motion had been served on the mortgagee who had taken possession of the goods before the adjudication, and upon the mortgagee afterwards appearing on the ground the goods had been sold by the mortgagee, this appeal was presented.

Sir W. Page Wood and De Gex for the assignees, in support, cited *Ex parte Heslop, in re Atkinson*, 1 De G., M'N. & G. 477.

*Petersdorff* and *Giffard* for the mortgagee, *contra*.

The Lords Justices said, the proper course would be, to dismiss the appeal against the mortgagee, inasmuch as if the order for sale were made in his presence, it would prejudice him in any proceedings, and the Commissioner would make the order *ex parte* without prejudice to any question. The appeal was there-

fore dismissed with costs,—with liberty to the assignees to apply for allowance of the same out of the estate.

Nov. 24.—*In re Vines, in re Hobbs*—Part heard.

— 25.—*Martin v. Pycroft*—Decree for specific performance.

— 25.—*Sheffield v. Earl of Coventry*—Stand over for hearing before the full Court.

— 25.—*Brenan v. Preston*—Part heard.

### Master of the Rolls.

*Rhodes v. Buckland*. Nov. 12, 1852.

**MORTGAGEES. — REDEMPTION BY SECOND MORTGAGEE, SUIT FOR. — INJUNCTION AGAINST PLAINTIFF.**

Held, that the first mortgagee on an estate is not entitled to sell under a power of sale pending a suit by the second mortgagee to redeem.

THIS was a motion for an injunction to restrain the first mortgagee possessing a power of sale on an estate from selling, until the right of the second mortgagee to redeem had been determined.

The Master of the Rolls said, the injunction must be granted.

Nov. 24.—*Shrewsbury and Birmingham Railway Company v. London and North Western Railway Company and others*—*Cur. ad. vult.*

— 24.—*In re Martin*—Order approving investment, and reference to conveyancing counsel as to title.

— 25.—*British and North American Steam Navigation Company, ex parte Goldsmid*—Name of appellant to be removed from list of contributories.

### Vice-Chancellor Turner.

*Wilkinson v. Stringer*. Nov. 12, 1852.

**SPECIFIC PERFORMANCE OF CONTRACT. — EXAMINATION OF WITNESSES VIVA VOCE.**

An order will not be made for the examination of witnesses *viva voce*, under the new practice, under the 15 & 16 Vict. c. 86, in cases in which issue has been joined before that Act came into operation, where, if the case had stood on bill and answer, an issue would not have been directed under the former practice. Where, therefore, the evi-

dence in a claim for specific performance of a contract was insufficient to support the alleged agency on the defendant's behalf, of the party contracting with the plaintiff, the claim was dismissed and an order to examine witnesses *viva voce* refused.

THIS was an application on behalf of the plaintiff in this claim, which was filed for the specific performance of a contract for the sale to the plaintiff of an estate, for an order to examine the witnesses *viva voce*, under the 39th Order of 7th August last. It appeared the contract was entered into by a Mr. Wild, as agent for the vendor, but that his agency was repudiated by the defendant.

*Rolt and Bovill* in support; Sir *W. Page Wood* and *Webb*, contra.

The Vice-Chancellor said, that unless, if the case had stood on bill and answer, the Court would have directed an issue, it would not proceed under the new practice to examine the witnesses *viva voce* on the mere speculation as to what evidence might come out on such examination. And as there was not sufficient evidence to establish the alleged agency to have enabled an issue to be directed, the application must be refused, and the claim would be dismissed.

*In re Batard.* Nov. 24, 1852.

LEGACY ACT.—PAYMENT OF MONEY OUT OF COURT, APPLICATION FOR.—PRACTICE.

*The application for the payment out of Court of money paid in under the Legacy Act (36 Geo. 3, c. 52, s. 32), is to be made at Chambers.*

THE Vice-Chancellor, in this application for the payment out of Court of a fund paid in under the 36 Geo. 3, c. 52, s. 32, said, that the order was made, as of course, upon proper evidence that the legatee had attained 21, and should therefore be made at Chambers, and the costs of applying to the Court would not in future cases be allowed.

Nov. 24.—*Thompson v. Daniel*—Cur. ad. vult.

—24.—*In re Halliday's Trust*—Cur. ad. vult.

—24, 25.—*In re Woodward*—Order on petition for delivery of child to mother.

Vice-Chancellor Kindersley.

*Howard v. Howard.* Nov. 25, 1852.

JURISDICTION IN EQUITY IMPROVEMENT ACT.—EXAMINATION OF WITNESSES *VIVA VOCE*.—PARTNERSHIP ACCOUNTS.

*Order made for the examination of witnesses viva voce according to the new practice under the 15 & 16 Vict. c. 86, in a suit relating to partnership accounts, upon the defendant's application, although issue had been joined before the coming into operation of that act.*

In this suit relating to certain partnership

transactions, publication had been enlarged for the purpose of examining witnesses, and the matter had, by arrangement entered into in July last, stood over to Nov. 2. This motion was now made, on behalf of the defendant, to proceed according to the new practice.

*Follett and Gordon* in support; *Bacon* and *Toulmin*, contra.<sup>1</sup>

The Vice-Chancellor said, that the case was well adapted to the examination of witnesses *viva voce*, and made an order accordingly.

*Fullerton v. Newton.* Nov. 25, 1852.

EQUITY JURISDICTION IMPROVEMENT ACT.—ORDER UNDER S. 52.—SUBSEQUENT BIRTH OF PARTY INTERESTED.

*Order made in the nature of a supplemental decree under the 15 & 16 Vict. c. 86, s. 52, upon the birth since the suit was instituted of a child interested as one of class therein.*

THIS was a motion for an order under the 15 & 16 Vict. c. 86, s. 52, in the nature of a supplemental decree. It appeared that a child interested as one of a class had been born since the suit was instituted.

*Freeling* in support.

The Vice-Chancellor said, that as the effect of the birth of the other party would be to vary the amount of the shares of each of the class, there was a "change of interest," and the order was made as asked accordingly.

Nov. 24.—*In re Creed's Trust*—Arrangement come to.

—25.—*Oxford, Worcester, and Wolverhampton Railway Company v. South Staffordshire Railway Company*—Stand over.

Vice-Chancellor Stuart.

*In re Steward's Estate.* Nov. 6, 1852.

PURCHASE-MONEY OF LANDS TAKEN UNDER COMPULSORY POWERS OF STATUTE.—REAL ESTATE.

*Held, that the purchase-money of lands taken under the compulsory powers of an Act of Parliament, and which had been paid into Court, went to the heir as impressed with the trusts of real estate, and not to the personal representatives as converted into personality.*

In this petition, it appeared that certain land had been taken by the Manchester Improvement Commissioners under the compulsory powers of their Act, and that the purchase-money had been paid into Court, and the divi-

<sup>1</sup> By the 39th Order of August 7, 1852, it is directed, "that in suits in which issue shall have been joined when these orders come into operation, the evidence to be used at the hearing of the cause shall be taken according to the existing practice of the Court, unless the parties shall consent, or the Court shall order, that the same shall be taken in the mode prescribed by the Act 15 & 16 Vict. c. 86, and these orders."

dends paid to the tenant for life. The estate was devised to a tenant for life, with remainder to Mr. H. J. Cramer, in the event of the tenant for life having no issue.

*Smyth* for the heir, in support, urged the fund represented the real estate, citing *Midland Counties' Railway Company v. Oswin*, 1 Coll. 80; *In re Taylor's Settlement*, 9 Hare, 596.

*Greene*, contra, referred to *Cookson v. Cookson*, 12 C. & F. 121; *In re Cross's Estate*, 1 Sim. N. S. 260.

The Vice-Chancellor, in accordance with the decisions cited on behalf of the petitioner, said, the money paid into Court must be considered as possessing the character of real estate, and would therefore go to the heir. The costs of all parties to be paid out of the fund.

Nov. 24, 25.—*James v. Lord Wynford*—*Cur. ad. vult.*

— 25.—*In re Vale of Neath Brewery Company, ex parte Wood*—Order striking name of appellant off the list of contributories as executor.

### Court of Queen's Bench.

*Cobbett v. Hudson*. Nov. 3, 20, 1852.

RIGHT OF PLAINTIFF CONDUCTING HIS OWN CASE ON THE TRIAL TO BE EXAMINED AS A WITNESS IN HIS OWN BEHALF.

*A rule was made absolute for a new trial of an action, where the presiding Judge had refused to receive the evidence of the plaintiff, who conducted his case in person, in his own behalf.*

THIS was a rule nisi for a new trial, obtained on May 24 last. On the trial of the action, which was brought against the keeper of the Queen's Prison, for a false return to a writ of *habeas corpus*, before Lord Campbell, C. J., the plaintiff sued *in forma pauperis*, and conducted his own case, and stated he should tender himself as a witness on his own behalf. The learned Judge having intimated that he could not act as counsel and be examined as a witness, the case proceeded, upon the plaintiff refusing to consent to an adjournment in order to instruct counsel on his behalf, without his evidence, and the defendant obtained a verdict.

*Watson and Unthank* showed cause; the plaintiff in person in support.

*Cur. ad. vult.*

The Court said, that the rule must be made absolute for a new trial, in order to give the plaintiff an opportunity of being examined as a witness and addressing the jury as counsel.

Nov. 24.—*Ex parte Barthelemy and another*—Application refused for *habeas corpus* to admit to bail.

— 24.—*Cornish and another v. Hawkins*—Rule nisi for amendment of endorsement on copy writ.

— 24.—*Regina v. South Wales Railway Company*—Rule absolute for mandamus on defendants to complete branch line.

Nov. 24.—*In re Lord Canning and Berrington*—Rule nisi to set aside award.

— 24.—*Regina v. Day*—Rule nisi for *quo warranto* on coroner for district of Hemel Hempstead, Hertford.

— 24.—*Regina v. Justices of Salop*—Rule nisi on defendants to issue warrant of distress for road-rate.

— 25.—*Regina (on the prosecution of Gedge) v. Mulcock*—Rule discharged, without costs, for criminal information for libel.

— 25.—*Regina v. Ashton*—Rule absolute for *certiorari* to remove conviction against publican under the 9 Geo. 4, c. 61.

— 25.—*Regina v. Judge of County Court of Westmoreland*—Rule nisi for prohibition.

— 25.—*Edwards v. Louwens*—Rule discharged to enter verdict for plaintiff.

— 25.—*In re Harrison and another, ex parte Ford*—Rule discharged, with costs, on attorneys to deliver copy of bill of costs.

### Queen's Bench Practice Court.

Nov. 24.—*Regina v. Earnshaw*—Rule nisi for *quo warranto* on town councillor of Oldham.

— 24.—*Regina v. Potts*—Rule discharged for criminal information for libel, on payment of costs.

— 24.—*Regina v. Gregory*—Rule nisi for *quo warranto* on town councillor of Reading.

— 24, 25.—*Arnies v. Kelton*—Rule discharged for inspection of machinery.

— 25.—*Regina v. Justices of Derbyshire*—Rule absolute for *mandamus* on defendants to enter and hear appeal.

— 25.—*Regina v. Mayor and Corporation of Leicester*—Rule nisi on defendants to execute bond for payment of annuity to town clerk.

— 25.—*Regina (on prosecution of Croll) v. Tallis*—Rule discharged, on payment of costs, for criminal information for libel.

— 25.—*Regina v. Sadlers' Company*—Rule nisi for *mandamus* on defendants to restore person to court of assistants, who had been removed for bankruptcy.

### Court of Common Pleas.

*Roberts and another v. Cobbett*. Nov. 5, 1852.

COLLIERY.—BOUNDARIES.—EVIDENCE OF COMMISSIONER FOR ASCERTAINING.—MISDIRECTION.—QUESTION FOR JURY.

*On the trial of an action relating to the boundary of a colliery, the only surviving Commissioner under the 1 & 2 Vict. c. 43, appointed to investigate and ascertain the limits of the mines, &c., in the Forest of Dean, was called to give evidence of the knowledge he had of "the old works," which were specified in the award and plan as bounding the plaintiffs' colliery on one side: Held, refusing a rule nisi for a new trial, that the evidence was properly admitted, inasmuch as it was not in explanation of the award and plan, but of the state*



of facts; and held that the question of boundary was properly left to the jury, and was not one of law to be decided by the Judge from the award and plan.

THIS was a motion for a rule nisi for a new trial on the ground of the improper reception of evidence. It appeared that the Commissioners who had been appointed under the 1 & 2 Vict. c. 43, to investigate and ascertain the limits of the mines, &c., in the Forest of Dean, had published an award and a plan in which one of the boundaries of the Cooper's Level Colliery, belonging to the plaintiffs, was stated to be "the old works." It appeared that a question arose as to the meaning of these words, and this action had been directed to be brought by the late Vice-Chancellor Parker, to ascertain the boundaries. At the trial before Cresswell, J., at the last Gloucester Assizes, Mr. Sapwith, the surviving Commissioner, was called to state the knowledge he had of "the old works" at the time the award was made, and an objection to the reception of his evidence as explaining the award and plan was overruled, and the defendant obtained a verdict, whereupon this motion was made.

Whateley, Alexander, and Phipson in support, and on the ground that the Judge ought not to have left the question of boundary to the jury, but have decided from the award and plan what their meaning was.

The Court said, the rule must be refused, as the Commissioner was only called to speak to a matter of fact, and not of opinion, and that the question had been properly left to the jury.

Nov. 24.—*Cole v. Stacey*—Rule nisi for prohibition on County Court Judge to stay proceedings herein.

—24.—*Holmes v. London and North Western Railway Company*—Rule absolute to enter verdict for defendants on 4th issue.

—25.—*Feddon, appellant; Sawyers, respondent*—Decision of revising barrister affirmed.

—25.—*Little v. Newport, Abergavenny, and Hereford Railway Company*—Rule absolute to enter verdict for defendants.

### Court of Exchequer.

*Duff and others v. Gant*. Nov. 5, 1852.

POLICY OF INSURANCE.—SUPPRESSION BY DECEASED OF INSANITY OF RELATIONS.—BILL OF EXCHANGE.—COLLATERAL SECURITY FOR ADVANCE.

Upon effecting a policy of insurance with the plaintiffs, the deceased had replied in the negative to a question as to whether he was aware of any disorder or circumstance tending to shorten life or to make an assurance more than usually hazardous. It appeared the deceased's mother and brother had died insane: Held, that the deceased was not bound voluntarily to disclose this to the plaintiffs, and that the policy was not void for withholding such circumstance:

Held, therefore, that they could not recover on a bill of exchange given by way of collateral security by the defendant upon the plaintiffs advancing the deceased a sum of money on his effecting the policy in question.

THIS was an action by the directors of the Commercial and General Life Assurance Company against the defendant, upon his promissory note for 200*l.*, which he had given by way of collateral security in 1850, on their advancing that amount to a Mr. William C. Knight, to which the defendant set up by way of defence the policy of insurance, which Mr. Knight had effected on his life with the plaintiff, for 600*l.*, but which upon his becoming insane and committing suicide in May, 1851, they had declared to be void, on the ground of the fraudulent concealment by the deceased that his mother and brother had died insane. It appeared that one of the questions put by the office to the deceased was, whether he was aware of any disorder or circumstance tending to shorten life or to make an assurance more than usually hazardous, and that this had been answered in the negative. The defendant having obtained a verdict, this motion was made for a rule nisi for a new trial, upon the ground of misdirection, on the trial before Martin, B.

Edwin James in support.

The Court held, that the deceased was not bound to communicate voluntarily to the office the manner in which his relations died, and that the policy was not invalid in consequence of such non-statement, and the plaintiffs were not therefore entitled to recover against the defendant, and the rule must be refused.

Nov. 24.—*Lumley v. Gye*—Rule absolute for leave to demur to declaration, and to plead several matters.

—24.—*Tanner v. Woolmer and others*—Rule nisi on leave reserved to set aside nonsuit and enter verdict for plaintiff.

—25.—*Chew v. Holroyd*—Rule absolute for prohibition to County Court Judge.

—25.—*Stedman v. Knight*—Rule discharged on payment of costs.

—29.—*Edwards and others v. Roberts and others*—Appeal dismissed, with costs, from County Court.

### Exchequer Chamber.

Nov. 25.—*Regina v. Riley*—Stand over.

—26.—*Stevenson v. Newnham*—Cur. ad. vult.

—26, 27.—*West London Railway Company v. London and North Western Railway Company*,—Cur. ad. vult.

—29.—*Lord Henniker v. Attorney-General*—Judgment of the Court of Exchequer affirmed.

—29.—*Clarke v. Gant*—Appeal dismissed from the Court of Exchequer.

—30.—*Wesson v. Allcard*—Judgment of the Court of Exchequer affirmed.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 11, 1852.

## ATTORNEYS' CERTIFICATE DUTY.

### THE CHANCELLOR OF THE EXCHEQUER'S STATEMENT.

WE participate in the sense of disappointment and regret felt at the omission from the Chancellor of the Exchequer's financial statement of any reference whatever to the repeal of that unjust and oppressive burthen, the Annual Certificate Duty. The Attorney's Certificate Tax is distinguished from all others by the circumstance that it has been deliberately condemned in the last Parliament by successive majorities against the whole strength and force of the late Government,—a fact which would seem to have rendered it imperative upon the present Chancellor to announce at least the grounds upon which he has determined to maintain the tax, if indeed maintained it is to be. In that division of the financial statement devoted to the *suffering classes*, injuriously affected by recent legislation, the case of the Attorneys and Solicitors might have been not inappropriately introduced, notwithstanding the somewhat premature and ill-timed announcement of one of our legal contemporaries,<sup>1</sup> copied into the daily papers, under the attractive title of "Law Looking Up," that 1,065 writs have been issued from the Courts of Common Law, between October the 24th and November the 20th in the present year, beyond the number issued in the corresponding period of the last year. Upon this temporary increase, arising chiefly, we apprehend, from the uncertainty prevailing as to the future practice in respect of writs issued antecedent to the 24th October, when the Common Law Procedure Act came into operation, but stimu-

lated, no doubt, by the increased facilities which the new system affords for obtaining judgment in undefended actions for debt, our sanguine contemporary bases the somewhat fantastic conclusion, "that law reform will be a positive benefit to the Attorneys, however injurious it may be to the interests of the Bar;" nay, that it will be found all other law reforms that may be introduced "will improve the fortunes of the Attorneys and reduce those of the Bar."

Our contemporary is certainly entitled to the merit of originality in the discovery that the recent changes have improved the fortunes of the Attorneys. If his assertion be correct, it affords another and a remarkable instance how ignorant men are of their own affairs, and how much better acquainted our learned contemporary must be with the condition of the attorneys than the attorneys themselves. In sober seriousness, however, we believe that the Attorneys and the Bar have been and are equally affected by the transitions to which the Profession is subjected, and without any desire or design to conceal the predominance of our sympathies with the larger branch of the Profession, we are convinced we express the feeling that prevails in that branch, when we state that they do not believe they have acquired, and have no desire to acquire, any benefits at the expense of the Bar. Both branches have suffered, and must continue to suffer, from legislative changes, and the only question really deserving of consideration is, whether the general public is proportionably benefited by the loss to which the Legal Profession is subjected.

Returning to the Chancellor of the Exchequer's statement, we are inclined to infer that the omission of all reference to the exceptional and peculiar fiscal grievance complained of by the attorneys was not an inadvertence, but indicative of a disposition

<sup>1</sup> The Law Times, Saturday, Nov. 27.  
VOL. XLV. No. 1,292.

to entertain the question. At all events, the occasion appears to be fitting for renewing the struggle, and we are satisfied the Incorporated and other Law Societies will not only take an active lead in the movement, but seek an early opportunity of pointing out the mode in which it can be most advantageously furthered by individual exertion. In a cause, the justice of which is so manifest, there can never be any excuse for supineness, and still less any reason for despair. The cause must be successful, and whether the success is immediate or postponed depends in no inconsiderable degree upon the judgment as well as the perseverance with which it is pursued.

Although the Chancellor of the Exchequer, in canvassing the various claims of the shipping, sugar, and agricultural interests, was silent on the demand made by 10,000 members of the Legal Profession, he could not avoid (in reference to the other calls on his justice), to admit, emphatically and repeatedly, the very principle on which the attorneys and solicitors claim to be relieved from an oppressive and anomalous burthen,—borne neither by the Bar nor by the medical nor clerical professions, nor by architects, engineers, or any other professional class.

Perusing attentively Mr. Disraeli's speech, we find the following passages, which seem to us clearly and distinctly to admit the grounds on which the tax ought to be repealed:—

"Nothing is more prejudicial to the country generally than that considerable classes of her Majesty's subjects should consider that they are liable to regulations injuriously affecting their industry, and from which the rest of the community is free." \* \* \*

"Therefore, if there be on the part of the shipping body, or on the part of any other class in this country, well founded claims to the consideration of Parliament, it is highly expedient, not only to the interest of public morality, but from the most utilitarian consideration that could possibly occur to the most unsentimental minds, that we should enter into these questions, ascertain their merits, and decide accordingly." \* \* \*

"That all real grievances may be remedied, that we shall cease to hear of the claims of a particular interest as *subject to burdens and vexations from which the community are free.*"

We understand that at the commencement of the present Session, the Incorporated Law Society suggested to Lord Robert Grosvenor the expediency of procuring

an early interview with the Chancellor of the Exchequer, and that nearly three weeks before the financial statement Lord Robert applied for an appointment to receive a deputation. It appears that, an interview having taken place but a few months ago, the Finance Minister,—occupied incessantly with the business before him,—considered it unnecessary to appoint another meeting before his parliamentary statement.

No doubt there will be no time lost in pressing forward the question. The Bill for the abolition of the Impost ought to be brought in before the Christmas recess, and there is every reason to expect that such will be the case.

## AMENDMENT OF THE BANKRUPT LAW.

### CLASSIFICATION OF CERTIFICATES.

It has already been observed, that the statement made by the Lord Chancellor in the House of Lords, on the 16th November, in reference to the measures of legal improvement about to be introduced, appears to have been misunderstood by the reporters in various, and not unimportant, particulars. Those who were fortunate enough to have heard the statement made by Lord St. Leonards, concur in describing it as remarkable for clearness and conciseness, but matters of detail can hardly be reported with accuracy, unless the art of reporting is combined with an adequate knowledge of the subject under discussion.

In considering how it happens that the business of the Court of Bankruptcy has fallen off—so that the fees received in respect of business in that Court are insufficient to meet the expenses,—the Lord Chancellor observed, that one of the reasons assigned for the decline of business was, "that the system of giving different classes of certificates operated as a stigma upon the trader." This subject was discussed with great eloquence and ability by Lord St. Leonards, who explained to the House, in precise terms, the extensive power given under the 198th section of the Bankrupt Law Consolidation Act to the Commissioners in granting or withholding certificates, and the difficulties imposed upon them by reason of the form of certificate directed by the Act. So far, the reporters appear to have given expression to his lordship's sentiments with entire accuracy; but when he proceeds to state how the evil is to be met and remedied by the alteration of the law, the report becomes

unintelligible, and we are left to conjecture the Chancellor's intentions. The question of "Class Certificates" was much discussed, not only in this and other publications, but amongst the trading and commercial community, when the Bankrupt Law Consolidation Bill was under the consideration of Parliament, and has lost none of its importance by reason of the fact, that what was then a mercantile novelty has now been illustrated by an experience of more than three years. No apology, therefore, is required for directing the attention of our readers to the manner in which the subject has been considered by the acute and practised mind of Lord St. Leonards. We give the report of this portion of his lordship's speech, as it appeared in the leading morning papers, without abridgment:—

"One reason assigned for the falling off of the business has been, that the system of giving different classes of certificates operates as a stigma upon the trader. The best men in the city of London, merchant princes, as they are, men of the highest feelings, may fall into misfortune, but in order to obtain a first-class certificate, it is requisite that nothing but unavoidable misfortune shall have contributed to the bankruptcy of the party. Now the very heart and soul of commerce is enterprise, and it is very difficult to say where enterprise ends and want of due confidence<sup>1</sup> begins [hear]. I am persuaded that one of the effects of the present system is to keep out of the Court of Bankruptcy the cases of many persons who would gladly avail themselves of it, if it were not for fear of the stigma which may be unjustly inflicted upon those who by their instrumentality might be exposed to it. The Act of Parliament states, that 'the Court, having regard to the conformity of the bankrupt to the Law of Bankruptcy, and to his conduct as a trader before as well as after his bankruptcy, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require.' It is, therefore, impossible to say that a very large power is not given to the Commissioners. It is stated in the next section, that the certificate shall be in the form given in the schedule, and from that schedule all the difficulty has arisen. The Commissioner is to certify that the bankruptcy has arisen from unavoidable losses and misfortunes, and therefore to award a first-class certificate; or that it has arisen not solely from unavoidable losses and misfortunes, in which case he is to award a certificate of the second-class; or that

the bankruptcy has not arisen from unavoidable losses and misfortunes, in which case he is to award a certificate of the third-class. The consequence of this is, that the Commissioners have the power to examine into all the acts of the bankrupt, including his personal conduct, and to scrutinise it in a way which has led to very great objection on the part of many persons to enter the Court. I propose to repeal so much of the Act as gives the Commissioners power to inquire into any ingredient of the bankruptcy *except whether it has arisen from unavoidable misfortune.*"

The objection to the existing system is, that an inquiry to ascertain whether a bankruptcy has arisen wholly, partially, or not at all, from unavoidable losses, opens a field for investigations into personal conduct, and a scrutiny into private transactions, offensive to those who become bankrupt, and in the opinion of many creditors not necessary for the purposes of justice. The Lord Chancellor proposes to remedy this evil, and he is represented to have arrived at the conclusion, that the Commissioner should be deprived of the power of investigating any ingredient of the bankruptcy, "*except whether it has arisen from unavoidable misfortune.*" In other words, that the Commissioner should be deprived of the power, the exercise of which is not the subject of objection, and restricted to the exercise of the power which is the subject of complaint. This is simply preposterous! The power Lord St. Leonards designs to deal with is, the power to inquire whether a bankruptcy arises from unavoidable losses; but it is not suggested how this can be effected, if granting or withholding the certificate is to depend on the Commissioners' estimate of the conduct of the bankrupt as a trader. Unless the Commissioners are relieved from the obligation of instituting any inquiries as to the conduct of the bankrupt, as a condition to granting a certificate, we do not see how it is possible to narrow the field of inquiry. The inquiry necessary to enable the Commissioner to determine whether a bankrupt should have an immediate certificate, a certificate after a longer or shorter suspension, or no certificate at all, involves all the elements which enable him to decide whether the certificate should be of one class or another. If the investigation into the bankrupt's conduct before the Commissioner is not to be full and searching, it had much better be dispensed with. The practical remedy, we incline to think, is that suggested by Mr. Freshfield, the Solicitor for the Bank, in his evidence before the Select Committee of the House of

<sup>1</sup> Probably a misprint for "cauti n," but sic in all the reports.

Lords, in 1848, before the over refined scheme of classifying certificates, and thereby "guaging the integrity of the bankrupt with the nicest exactitude," was introduced in any measure before Parliament. Mr. Freshfield's plan was, to revert to the state of the law previously to the passing of the Act 5 & 6 Vict. c. 122, giving a proportion of the creditors the power of withholding or granting the certificate; subject, however, to an appeal to the Commissioner on the part of the bankrupt, if the certificate is withheld; and also subject to an appeal by any dissenting creditor, in case the certificate is granted by other creditors. Mr. Freshfield's evidence explains so fully the difficulty then felt, and now universally acknowledged, that we take leave to subjoin that portion relating to the certificate:—

"Do you consider that the transfer from the creditor to the Court of the power of granting the certificate was an improvement?"

"I do not."

"You think it was better vested in the creditors?"

"I think it would have been much better if it had been left in the hands of the creditors, as it was before, subject to the right on the part of the bankrupt to apply to the Commissioner to have his certificate granted if withheld by the creditors."

"And subject to the right also on the part of dissenting creditors to apply against him?"

"Yes."

"What do you consider has been the injury which has been done to creditors by putting it into the hands of the Commissioner?"

"I think it is left to a Commissioner who has no substantial means of forming a correct judgment upon the subject, and in consequence very inaccurate conclusions are come to by the Commissioners. The creditors are placed in a false position altogether. Certificates are obtained by parties who ought never to obtain them, and in cases in which the creditors would never have signed the certificate, but in which they will not take the prominent and obnoxious part of being opposers."

"Do not you consider that creditors under the old system used rather to err from lenity than from hardship?"

"I do, certainly."

"Has not the Commissioner an opportunity of examining the conduct of the bankrupt in the course of proceedings?"

"He has, but it is very imperfect."

"Has not he an opportunity of consulting the official assignees?"

"Yes, but that does not lead him to a sound conclusion."

"Has not he an opportunity of consulting the trade assignees also?"

"He has; but the result of my observation has been, that the Commissioner comes to a

very unsound conclusion upon those subjects, which is rendered conspicuous to us by their giving judgments upon the subject, expressing opinions which the creditors know to be unfounded."

"How then would the Commissioner be able to judge in case of an opposition of a creditor?"

"Wherever there were parties before a Commissioner, either the bankrupt himself appealing to the Commissioner to grant his certificate, or the parties opposing the grant of that certificate, there a case would be made out, and the Commissioner would decide judicially upon that case; but the difficulty arises upon the Commissioner proceeding to give a judgment and express an opinion where he has only one side of the question before him."

"You mean to say, that in case of a bankrupt or creditor coming before him by appeal, the Commissioner would have the case presented to him judicially by the conflict of parties before him?"

"Precisely so. He would have the facts, upon which he would give a judgment. The creditor opposing the certificate would have to make out his case, and the Commissioner would properly give judgment upon the evidence before him, and upon the result of his inquiries."

"Would not that be liable to this difficulty, that as creditors are apt to be lenient and careless, the result might be a tendency to grant certificates, there being nobody to oppose them?"

"I think that would be a less evil than that of a Commissioner granting a certificate upon the result of his own investigation and giving a judgment which was unfounded. It tends to bring justice into disrepute."

"You mean to say that you have heard Commissioners, in giving their reasons in public, state matters which were known to the creditors to be unfounded?"

"Yes."

Mr. Maynard, of the firm of Crowder and Maynard, was also examined before the Lords' Committee, and expressed his doubts whether the transfer of the power of granting or refusing the certificate to the Commissioner worked well. Mr. Maynard says, "I have seen instances where parties have obtained their certificates who ought not to have had certificates. The attention of creditors is now called off from the subject."<sup>2</sup> In the face of these warnings from persons of practical knowledge and experience, the jurisdiction previously intrusted to the Commissioners, was rendered more delicate and critical, and therefore more difficult, by the introduction of this plan of granting class certificates in the Act of

<sup>2</sup> See Minutes of Evidence, page 226, and Questions, from 2045 to 2056, inclusive.

<sup>3</sup> Minutes of Evidence, page 271; Question, 2434.

1849. As was then foretold, this excess-  
ence on the Bankruptcy Laws has been  
found to operate most unsatisfactorily, and  
to bring into prominent notice the want of  
uniformity in the decisions of the Commis-  
sioners, and many other imperfections in the  
system, which it is to be hoped Lord St.  
Leonards will devise the means, as we have  
no doubt he has the will, to correct by  
legislative interference.

## LORD BROUGHAM'S LAW OF EVIDENCE AND PROCEDURE BILL.

### ANALYSIS OF CLAUSES.

THE following is the marginal abstract of  
this Bill, and will for the present be sufficient  
for the consideration of our readers. When  
the Bill moves forward, we shall enter on the  
details. We have marked the principal sub-  
divisions of the Bill, showing the several sub-  
jects it comprehends.

I. Preamble states that the Laws touching  
Evidence and Procedure require further amend-  
ment.

Husbands and wives to be admissible wit-  
nesses; sect. 1.

Exception in criminal cases and in cases of  
adultery; s. 2.

Communications between husband and wife  
protected; s. 3.

So much of proviso in sect. 1 of 6 & 7 Vict.  
c. 85, as relates to husbands and wives re-  
pealed; s. 4.

II. Enactments respecting payment of money  
into Court repealed; s. 5.

Money may be paid into Court in all per-  
sonal actions; s. 6.

Form of plea of payment into Court; s. 7.

How money is to be paid in and out of  
Court; s. 8.

How plaintiff may reply to plea of payment  
into Court; s. 9.

Payment into Court no admission of cause  
of action; s. 10.

III. How far a party can discredit his own  
witness; s. 11.

Power to contradict witnesses as to collateral  
matters affecting their credit; s. 12.

How far witnesses may be cross-examined  
as to their written statements, without produc-  
ing the writings; s. 13.

Witnesses not protected from answering  
questions tending to criminate them; s. 14.

IV. Modes of proving handwriting; s. 15.

Handwriting may be proved or disproved  
by comparison; s. 16.

Persons whose handwriting is disputed may  
be required to write in Court; s. 17.

Writings more than 30 years old, how  
proved by comparison; s. 18.

Nature of comparison allowed; s. 19.

Writings used to disprove handwriting by  
comparison must have been written *ante litem  
motam*; s. 20.

A single witness sufficient to prove any fact;  
proviso as to orders of affiliation; s. 21.

V. Judge at Nisi Prius may in certain cases  
decide questions of fact without a jury; s. 22.

Either party may require a jury; s. 23.

Mode of enforcing discovery of documents;  
s. 24.

Power to either party in a cause to cross-  
examine his opponent before the trial; s. 25.

VI. Crown to receive and pay costs like or-  
dinary suitors; s. 26.

Right to begin and reply, same to Crown as  
to other suitors; s. 27.

VII. No objection to want of stamps, if do-  
cument ten years old; s. 28.

VIII. Queen in Council may authorize the  
trial of prisoners in adjoining counties; s. 29.

Court of Queen's Bench may order criminal  
trials in any county; s. 30.

Court may order costs to prisoner acquitted;  
s. 31.

Distinction between local and transitory  
offences abolished; s. 32.

Courts of oyer and terminer, &c., may issue  
writs of subpoena into any counties; such  
writs may be enforced by attachment in the  
Queen's Bench; s. 33.

IX. Expense of attendance on writs of sub-  
poena shall be tendered to witness; s. 34.

Interpretation clause; s. 35.

Act not to extend to Scotland; s. 36.

Short title of Act; s. 37.

Commencement of Act; s. 38.

## NEW ORDERS IN CHANCERY.

### PAYMENT OF FEES BY ADHESIVE STAMPS.

3rd December, 1852.

THE Right Honourable Edward Barten-  
shaw, Lord St. Leonards, Lord High  
Chancellor of Great Britain, doth hereby,  
in pursuance of an Act of Parliament  
passed in the 15 & 16 Vict., intituled "An  
Act for the Relief of Suitors of the High  
Court of Chancery," and in pursuance  
and execution of all other powers enabling  
him in that behalf, order and direct as fol-  
lows, that is to say,—

1. That the Commissioners of Inland Re-  
venue do prepare stamps impressed upon ad-  
hesive paper of the amounts following, that is  
to say,—3d., 4d., 8d., 1s. 4d., 1s. 6d., 2s. 6d.,  
and 2s. 8d.

2. That such stamps shall be affixed by the  
parties requiring to use the same, on the vellum,  
parchment, or paper, on which the proceeding

in respect whereof such stamps may be required, is written, printed, or engrossed, or which may be otherwise used in reference to such proceeding.

3. That every officer of the Court of Chancery who shall receive any documents to which a stamp shall be so affixed shall, immediately upon the receipt thereof, obliterate or deface such stamp by impressing thereon a seal to be provided for that purpose, but so as not to prevent the amount of the stamp from being ascertained, and no such document shall be filed or delivered out until the stamp thereon shall be obliterated or defaced as aforesaid.

#### TAXING MASTERS, REGISTRARS, AND RECORD OFFICE FEES.

4th December, 1852.

THE Right Honourable Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the 15 & 16 Vict., intituled "An Act for the relief of the Suitors of the High Court of Chancery," and in pursuance of all other powers enabling him in that behalf order and direct as follows:—

I. *When no certificate of the taxation of a bill of costs* shall be required, the *ad valorem* duty directed by the Order of the 25th day of October to be levied by Stamps on the Master's certificate shall nevertheless be due and shall be payable on the amount of the bill as taxed, or on the amount of such part thereof as may have been taxed, and the solicitor is in such case to cause the proper stamp (the amount thereof to be fixed by the Master) to be impressed on or annexed to the bill of costs.

II. The fees hereunder specified shall hereafter be collected, not in money, but by means of stamps denoting the amount of such fees, stamped or affixed at the expense of the parties liable to pay the fees on or to the vellum, parchment, or paper on which the proceedings in respect whereof such fees are payable are written or printed, or which may be otherwise used in reference to such proceedings.

##### 1st. In the Registrars' Office.

For orders made by a Judge in Chambers, drawn up the Registrar, the like fees as by the Order of the 23rd October, 1852, are directed to be taken by the Chief Clerks to the Judges for orders drawn up by such Chief Clerks.

##### 2nd. In the Record and Writ Clerks' Office.

£ s. d.

For amending every record of any will	0	10	0
For amending every office copy thereof	0	5	0
Copies of documents left as exhibits, per folio	0	0	4

#### PAYMENT OF FEES BY STAMPS.

##### PRACTICAL INCONVENIENCES.

THE Practitioners in Chancery have been put to much inconvenience and delay, consequent on the change effected by the Suitors' Relief Act, under which all the fees of office are paid by stamps instead of money.

We have received several remarks on the nature and extent of the inconveniences sustained in practice, with suggestions for their removal; and from which we select the following particulars:—

These fee stamps, it appears, may be classed under the following heads:

1st. Fees on proceedings where a *fixed sum* is paid, without reference to the length of the document. In this class are writs, summonses, certificates, reports, bills, informations, claims, special cases, affidavits, decrees and orders, searches, advertisements and inspections.

2nd. Fees on proceedings, depending on *length*, such as office copies of pleadings, depositions, and affidavits.

3rd. Fees for officers' attendance as witnesses, which depend on the *time* occupied.

4th. Fees depending on the *number* of defendants for entering appearances, and on the number of deponents for administering oaths.

The chief inconvenience to the practitioners by this mode of collecting fees, is experienced in stamping bills and affidavits, and obtaining office copies.

*As to Pleadings.*—According to the former practice, when office copies were paid for in money, the solicitor bespoke the copy, and afterwards attended to receive it, and then paid the fees. Now, he has to wait, not only till the record is found, but the number of folios estimated; he then pays the office stationer the estimated amount, but which can seldom be precisely ascertained. On attending again to receive the office copy, he has to pay or receive the difference between the sum deposited and the actual charge. Thus, the solicitor loses much time in bespeaking the copy, and has to make two entries of each transaction in his book of disbursements; and the office stationer has to keep a duplicate account.

At the *Accountant-General's* Office there is also the same inconvenience and delay on *Transcripts* depending on length.

*As to Affidavits.*—The same inconvenience arises in bespeaking office copies of affidavits and paying for them. In addition thereto, where

affidavits are sworn in the country, it often happens that no stamp is used or an insufficient or inaccurate one. The stamp must be a Court of Chancery stamp, and not another stamp of the same amount,—otherwise the Fee Fund would suffer a loss, and in all such cases there is the delay and inconvenience of attending specially at the Stamp Office.

In regard to *town* affidavits also, it frequently occurs that after the affidavit has been engrossed on a proper stamp, another deponent is added, the stamp is then insufficient, and a re-engrossment or an attendance at the Stamp Office becomes necessary.

Inconvenience is also occasioned in the *Taking Masters' Office*, where there are several bills of costs, and the party obtaining the certificate objects to pay the poundage for the other parties; and there being but one certificate, each party cannot bring a stamp.<sup>1</sup>

#### PROPOSED REMEDIES.

The inconveniences would be removed by the adoption of one of the three following plans:—

1st. That office copies be bespoken and paid for as formerly when taken away. It appears that the instances in which office copies have been bespoken and not afterwards paid for are very few; and consequently the number of stamps which would be spoiled might be periodically allowed at the stamp office on a certificate of the officer in whose department they had been spoiled.<sup>2</sup> Or the loss to the Fee Fund might be avoided by compelling the solicitor, within a limited time, to take the copies he had bespoken. To carry this suggestion into effect, it appears that a stamp distributor should be appointed, to whom a certain amount of stamps should be delivered periodically, upon security being given by the distributor.

2nd. In lieu of the preceding suggestion, and in accordance with the practice in the Registrar's Office,—where a fixed fee of 1*l.* is paid for an office copy of a decree or order, or of a petition of appeal or rehearing,—it is proposed for avoiding the inconvenience of having a separate stamp of 1*s.* 6*d.* for each deponent, in addition to 2*s.* 6*d.* for filing an affidavit, an aggregate stamp of 5*s.* might be used for all affidavits.<sup>3</sup> And to prevent the inconvenience of having a 4*d.* stamp on each folio of an office copy, an aggregate stamp might be fixed for all office copies. But in order to avoid the hardship on suitors in small cases, it is sug-

gested that the office copies of pleadings and depositions not exceeding 50 folios should be 10*s.*, with 10*s.* for each additional 50 folios, and for affidavits not exceeding 25 folios 5*s.*, and the like fee on each additional 25 folios. The abolition of small fees is particularly suggested as facilitating business.

3rd. The preferable course, both to the suitor and the practitioner, for removing all inconvenience and securing the advantage of despatch, would be, to direct the party, or his solicitor,—who files an answer, affidavit, or other pleading or proceeding,—to deliver a copy, as in the case of printed bills (and according to the practice in regard to pleadings in the Common Law Courts) to the opposite party, or his solicitor. Such copy would be in the nature of an attested copy, verified by the signature of the solicitor, and charged for, subject to taxation, as costs in the cause. The loss to the Fee Fund, if this suggestion were adopted, might be made up by the increase of other fixed fees.

Since the receipt of the foregoing suggestions, we have obtained a copy of the Lord Chancellor's order, directing the use of *adhesive* stamps (see p. 93, *ante*). This prompt relief afforded by his lordship will apply to all the instances in which at present it would be necessary to send specially to the Stamp Office to add the filing and oath stamps to affidavits,—the oath stamps to answers,—and the transcript stamps at the Accountant-General's Office. The inconvenience as to office copies will also, we understand, be speedily removed.

#### BUSINESS AT THE CHAMBERS OF THE EQUITY JUDGES.

THE following applications are to be made at the Chambers of the Judges:—

1. As to guardianship of infants (except the appointment of guardian *ad litem*).
2. For the appointment of special guardian to concur in a special case.
3. As to maintenance or advancement of infants.
4. Under the Drainage Act.
5. Under the Trustees Acts of 1850 and 1852.
6. For the administration of estates under the Act 15 & 16 Vict. c. 86.
7. Under the Legacy Duty Act for payment of money out of Court.
8. For time to plead, answer, or demur.
9. For leave to amend bills or claims.
10. For enlarging publication or the time for closing evidence.
11. For the production of documents.
12. Relating to the conduct of suits or matters.
13. As to matters connected with the management of property.

<sup>1</sup> It must be admitted that, according to the former practice, the solicitor who had charge of the order to tax, was obliged to collect the several proportions of per-centage from the respective solicitors.

<sup>2</sup> The solicitors also unavoidably have many stamps spoiled, and which should be allowed on their certificate, instead of an affidavit and personal attendance at the Stamp Office.

<sup>3</sup> The adhesive stamps ordered by the Lord Chancellor will remove the difficulty, both as to the filing fee and the fee on each deponent's oath.



14. For payment into Court of purchasers' moneys under sales by order of the Court, and investing the same.

[We gave this List in the Postscript of the 13th November, but deem it useful to repeat it here].

## STATISTICS OF THE COUNTY COURTS.

### ANALYSIS OF PARLIAMENTARY RETURN OF BUSINESS,

*From 1st Jan. to 31st Dec., 1851.*

1. Number of plaintiffs entered :  
Above 20*l.* and not exceeding 50*l.* £ 13,446  
Not exceeding 20*l.* . . . . . 428,138

Total number of plaintiffs entered <sup>1</sup> . . . . . 441,584

2. Number of plaintiffs tried :  
Above 20*l.* and not exceeding 50*l.* 8,236  
Not exceeding 20*l.* . . . . . 235,410

3. The number of days that the 60 Courts has sat, is 8,356.<sup>2</sup>

4. The total amount of moneys for which plaintiffs were entered, is . . . . . £1,624,916

5. The total amount of moneys for which judgment has been obtained exclusive of costs, is . . . . . £815,514  
And the amount of such costs,<sup>3</sup> is 191,075

6. The amount of moneys paid into Court, in satisfaction of debts sued for, without proceeding to judgment, is . . . . £100,194

7. The total of the Judges' fund and officers' fees, is . . . . . £231,156  
Which consists of Judges' fund . . . . . £83,970

Clerks' fees, including those in cash book and in execution book . . . . . 83,970

Bailiffs' fees, including those on executions . . . . . 63,216

The moneys received on account of the general fund, is . . . . . 41,066

Gross total amount of moneys received . . . . . £272,500

8. The total amount of moneys received to the credit of the suitor was . . . . £618,468  
And the amount paid . . . . . 615,191

9. The number of causes tried by a jury is 879, in 433 of which the party requiring the jury obtained a verdict.

10. The number of executions issued by the clerk of the Court against the goods of defendants, is . . . . . £59,762

11. The number of warrants of commitments issued by the clerk of the Court, is £9,839

The number of appeals entered under the 13 & 14 Vict. c. 61, from 1st Jan. to 31st December, 1851, inclusive, was 38, and 3 were pending on 1st Jan. 1851, of which 11 were

confirmed, 8 were reversed, 15 were dropped, in 1 new trial ordered, and the other 6 remain undecided.

The number of plaintiffs entered by consent of parties, under the 13 & 14 Vict. c. 61, s. 17, from 1st Jan. 31st Dec. 1851, inclusive, was 40, of which 30 were tried, together with 1 which was entered in 1850.

The total amount received by the treasurers on account of the general fund, from the commencement of the Courts to 31st Dec. 1851, inclusive, is . . . . . £239,265

And the payments made thereout 188,032

## SELECTIONS FROM CORRESPONDENCE.

### EMOLUMENTS OF OFFICIAL ASSIGNEES.

Some years ago 80,000*l.* was received by an official, on which he charged and was paid his 5*l.* per cent., being 4,000*l.* The was little or no trouble in getting in the money, and it was all collected in about a month.

The charges of the solicitor to the commission for the same trouble would not have exceeded some 25*l.* or 30*l.*—nearly 4,000*l.* was therefore shamefully and improperly taken out of the creditors' pockets. A SOLICITOR.

### NON-ATTENDANCE OF COUNSEL.

And so it seems the attorney is to be indicted in costs, if his counsel fail to attend the Court. Was ever so monstrous an idea promulgated from the Bench before? Everything seems to be done to lower the Profession and do them every possible injury, regardless of their fair claims to protection;—while, on the other hand, every advantage is given to the other branch of the Profession.

If such a rule is ventured to be acted upon, there will be no alternative but to pass an Act of the Legislature authorising an action at law to recover a compensation in damages against the counsel, as well as to enforce a return of his fee so unrighteously retained. Indeed, my conviction is, that in all cases where the counsel fails to attend the fee should be returned; but how rarely, very rarely, do we see this practised.

AN ATTORNEY OF NEARLY 50 YEARS.

## APPEALS FROM THE COLONIAL COURTS TO THE PRIVY COUNCIL.

By an Order in Council, dated Windsor, November 27th last, it is declared expedient, according to the provisions of the Act passed in the 7 & 8 Vict. for amending an Act passed in the 4 Wm. 4, that any person or persons may appeal to her Majesty, her heirs and successors, in her or their Privy Council, from any final judgment, decree, order, or sentence of the Supreme Court of the province of New Brunswick, as a Court of civil jurisdiction, or as a Court of revenue or of ecclesiastical, in such manner, within such time, and under and subject to such rules, &c., as therein mentioned.—From the *London Gazette*, of Dec. 7.

<sup>1</sup> The average amount of which is 8*l.* 13*s.* 7*d.*

<sup>2</sup> This would make an average of 139 days or 22 weeks in the course of the year.

<sup>3</sup> This amount includes the allowance to counsel, attorneys, and witnesses.

# **LOCAL AND PERSONAL ACTS,**

*Declared Public, and to be Judicially Noticed.*

15 & 16 VICT. 1852.

*[Concluded from p. 68.]*

115. An act for repairing the Road from Leek in the county of Stafford to Monyash, and from Middlehills to the Macclesfield Turnpike Road near Buxton in the county of Derby, and thence to Otterhols, and certain branches of road communicating therewith.

116. An act to consolidate and amend the Acts relating to the Ipswich Dock, to allow certain drawbacks, and for other purposes.

117. An act to enable the South Wales Railway Company to construct new Railways to Milford Haven and at Newport, and to abandon portions of the lines from Fishguard and at Haverfordwest; and for other purposes.

118. An act for making a Railway from the Lancashire and Yorkshire Railway in the township of Bowling near Bradford to the railway belonging to the Lancashire and Yorkshire and London and North Western Railway Companies, or one of them, in the township of Wortley near Leeds, all in the West Riding of the county of York, to be called "The Leeds, Bradford, and Halifax Junction Railway," and for other purposes.

119. An act for maintaining the Road from Blackburn to Preston and the Two Branches therefrom, and erecting a Bridge on the line of the said road over the river Ribbles, all in the County Palatine of Lancaster.

120. An act to repeal an Act passed in the 4th year of the reign of his late Majesty King George the Fourth, intituled "An Act for more effectually repairing the Road from Preston to Garstang in the county of Lancaster;" and to make other provisions in lieu thereof.

121. An act for making further provision for the Conservancy of the Port and Harbour of Belfast, for conferring additional powers on the Belfast Harbour Commissioners, and for other purposes.

122. An act for maintaining and improving the Blyth and Tyne Railway in the county of Northumberland, and for incorporating the Subscribers thereto.

123. An act to repeal the Act relating to the Road from the town of Kingston-upon-Thames in the county of Surrey to Sheethbridge near Petersfield in the county of Southampton; and to make other provisions in lieu thereof.

124. An act for the Incorporation, Establishment, and Regulation of the North British Flax Company, and to enable the said company to purchase and work certain Letters Patent.

125. An act for incorporating and giving Powers to the Frome, Yeovil, and Weymouth Railway Company, and for other purposes.

126. An act for enabling the Monmouthshire Railway and Canal Company to make certain new railways, and for other purposes.

127. An act for enabling the York and North Midland Railway Company to make a Railway to the Victoria or East Dock at Hull, and for other purposes.

128. An act for constituting Commissioners for the Improvement of the River Nene and the Navigations thereof; for the more effectual drainage of certain lands in the counties of Northampton, Huntingdon, and Cambridge; and for other purposes.

129. An act to amend an Act passed in the 7th year of the reign of King George the Fourth, intituled "An Act for more effectually making, repairing, and improving certain Roads leading to and from Liskeard, and certain other Roads therein mentioned, in the counties of Cornwall and Devon;" and for other purposes.

130. An act for the Conservancy of the river Humber, and for amending some of the Provisions of an Act relating to the Kingston-upon-Hull Docks.

131. An act to extend and amend the Provisions of the Act relating to the Wedmore Turnpike Road in the county of Somerset, to create a further term therein, and for other purposes.

132. An act for abandoning certain Parts of the Undertaking of the Lancashire and Yorkshire Railway Company; for constructing certain new Works, and extending the Time for Completion of existing Works; and for Sale of superfluous Lands; for regulating certain Portions of the Capital of the Company and the Application of Capital; and for authorising the raising of Money by Annuities; and for other purposes.

133. An act to confer on the Great Western Railway Company further Powers for the Purchase of Lands on the Lines of, and for the Construction of, the Birmingham and Oxford Junction and Birmingham, Wolverhampton, and Dudley Railways respectively; and for the Alteration of the Works of Part of the last-mentioned Railway; and for the Formation of an Extension Line of Railway at Wolverhampton; and for other purposes.

134. An act for more effectually maintaining and keeping in repair the Road from Cambridge to Ely, and other Roads therein mentioned, in the Counties of Cambridge and Norfolk.

135. An act for consolidating into One Act and amending the Provisions of the several Acts relating to the North Western Railway Company; for extending the Time for constructing certain Parts of their Undertaking; and granting further powers to the said company; and for other purposes.

136. An act for the Reduction of Dues on Shipping and Goods payable to the Mayor, Aldermen, and Burgesses of Kingston-upon-Hull, the Hull Trinity House, and the Dock Company at Kingston-upon-Hull respectively.

137. An act to enable the Midland Great Western Railway of Ireland Company to make a Deviation in the authorised Line to Longford, and a Branch Railway to the town of Cavan, and for other purposes.

138. An act for the better Establishment of a Market at Torquay in the county of Devon, and for other purposes.

139. An act to repeal the Acts relating to

the Asthall and Buckland Turnpike Road, and to make other Provisions in lieu thereof.

140. An act for enabling the Completion of the Wilts, Somerset, and Weymouth Railway between Frome and Weymouth to be effected, and for authorising and confirming Contracts between the Great Western Railway Company and the Kennet and Avon Canal Company and other companies, and for other purposes.

141. An act for incorporating Claussen's Patent Flax Company, and to enable the said company to purchase and work certain Letters Patent.

142. An act for enabling the Amalgamation of the Stockton and Hartlepool Railway Company and the Hartlepool West Harbour and Dock Company, and for authorising the Lease or Purchase of the Clarence Railway by the Stockton and Hartlepool Railway Company or the Amalgamated Company, and for consolidating the Acts relating to the same companies; and for other purposes.

143. An act for the Improvement of the borough of Cork.

144. An act to enable the Manchester, Sheffield, and Lincolnshire Railway Company to construct certain Branch Railways.

145. An act to amend and enlarge the Powers and Provisions of the Acts relating to the Oxford, Worcester, and Wolverhampton Railway Company; to extend the Time for the Completion of the Works, and the Purchase of certain Lands; to authorise Deviations in the Line and Works, and the Construction of certain Branches and Works; and for other purposes.

146. An act to authorise the Shrewsbury and Chester Railway Company to construct additional Branches; to purchase or hire Steam-boats; and for other purposes.

147. An act to revive and extend the Time for the Execution of certain Powers conferred by "The Wycombe Railway Act, 1846;" and for reducing the Capital of the Wycombe Railway Company; and for enabling the Company to enter into Arrangements with the Great Western Railway Company; and for other purposes.

148. An act for enabling the Eastern Union Railway Company to make Arrangements with certain of their Creditors and Shareholders, and with respect to their Capital, and for granting additional Powers to the Company; and for other purposes.

149. An act to incorporate the London Necropolis and National Mausoleum Company, and to enable such Company to establish a Cemetery in the parish of Woking in the county of Surrey, and for other purposes.

150. An act for constructing a Cemetery near to Torquay in the county of Devon.

151. An act to repeal the Wexford Harbour Improvement Act, and to make new Arrangements for a more effective and expeditious Execution of a Portion of the Undertaking thereby authorised, and for other purposes.

152. An act to appoint Commissioners for the Execution of certain Improvements in the

Navigation of the river Slaney, and for other purposes.

153. An act to enable the South Yorkshire Railway and River Don Company to transfer their Undertaking to the Great Northern Railway Company.

154. An act to repeal the Acts relating to the Exeter and the Countess Wear Turnpike Roads, and to make other Provisions in lieu thereof, and to authorise the Construction of certain new Roads; and for other purposes.

155. An act for the Transfer of the Undertaking of the British Gas Light Company to the Commercial Gas Company, and for other purposes.

156. An act for extending the Chelsea Waterworks, and for better supplying the city of Westminster and Parts adjacent with Water.

157. An act for enabling the Grand Junction Waterworks Company to obtain a Supply of Water from the Thames at Hampton, and to construct additional Works, and for other purposes.

158. An act for making divers Provisions with respect to the Southwark and Vauxhall Water Company, for empowering that company to execute additional Works, and for other purposes.

159. An act for enabling the Company of Proprietors of the West Middlesex Waterworks to obtain by Agreement a Supply of Water from the Thames above the Reach of the Tide, and to raise further Capital, and for other purposes.

160. An act to enable the Governor and Company of the New River to improve their Supply of Water; and for other purposes.

161. An act for enabling the Local Board of Health for the town and district of Swansea to construct Waterworks; and for other purposes.

162. An act for the Conservancy, Improvement, and Regulation of the river Tees, the Construction of a Dock at Stockton, the Dissolution of the Tees Navigation Company, and other purposes.

163. An act to define and amend the Mineral Customs and to make better Provision for the Administration of Justice in the Barmote Courts within the Soke and Wapentake of Wirksworth, and within the Manors or Liberties of Crich, Ashford, Stoney Middleton and Eyam, Hartington, Litton, Peak Forest, Tideswell, and Youghreave, in the county of Derby.

164. An act for making divers Provisions with respect to the East London Waterworks Company, for empowering that company to execute additional Works, and for other purposes.

165. An act to authorise the Use by the Shrewsbury and Birmingham Railway Company of the Navigation Street Station in Birmingham, and for other purposes.

166. An act for making a Railway or Tramroad from the Aberllefenny Slate Quarries in the parish of Talyllyn in the county of Me-

tioneth to the river Dovey in the parish of Towyn in the same County, with branches therefrom; and for other purposes.

167. An act to consolidate into One Act and to amend the Provisions of the several Acts relating to the Birkenhead, Lancashire, and Cheshire Junction Railway Company, to define the Undertaking of the Company, and for other purposes.

168. An act to authorise Traffic Arrangements between the Great Western, the Shrewsbury and Hereford, and the Hereford, Ross, and Gloucester Railway Companies.

### PRIVATE ACTS,

PRINTED BY THE QUEEN'S PRINTER,

*And whereof the Printed Copies may be given in Evidence.*

1. An act to authorise the Improvement and better Management and eventual Leases or Sale of the Piece Halls in the town of Bradford in the county of York; and to incorporate the Proprietors thereof.

2. An act for enabling the Trustee or Trustees of the Will of the Right Honourable Anna Maria Dowager Lady Wenlock deceased to sell and dispose of a Leasehold Messuage, with the Statuary and Household Furniture by the same Will bequeathed as therein mentioned.

3. An act to unite the Manchester House of Recovery with the Manchester Royal Infirmary, Dispensary, and Lunatic Hospital or Asylum.

4. An act for authorising the Sale of the Bowden Park Estate in the county of Wilts, devised and settled by the Will of Ezekiel Harman, Esq., deceased, and certain Codicils thereto, and for laying out the Surplus of the Money produced by such Sale, after Payment of a Mortgage affecting the same, in the Purchase of other Estates to be settled to the same uses.

5. An act to authorise the granting of Leases of Estates devised by the Will of John Clarkson, Esq., deceased, situate in the counties of Middlesex and Surrey.

6. An act to enable the Trustees of the Right Honourable James, Earl of Fife, deceased, to sell and convey the Estate of Balmoral in the county of Aberdeen to His Royal Highness Prince Albert of Saxe Coburg and Gotha, and to grant Feus of Parts of the Estates vested in them.

7. An act to explain and amend the Powers of the Governors of the Hospital in Edinburgh founded by George Watson, Merchant Burgess of Edinburgh.

8. An act to enable Francis Adams, Esq., or other the Committee of the Estate of Mary Shute Adams, a Person of unsound Mind, for and in the name and on behalf of the said Mary Shute Adams, to consent to the exercise of certain Powers contained in the Marriage Settlement of the said Francis Adams, and in a certain Act of Parliament passed in the 1st year of the reign of her present Majesty, and to exercise the Power of appointing new Trus-

tees contained in the said Settlement; and for extending the Powers of Sale and Exchange contained in such Settlement.

9. An act for enabling Leases and Sales to be made of Estates subject to the Will of Micah Gedling deceased, and for other purposes, and to be called "Gedling's Estate Act, 1852."

10. An act to enable the President and Scholars of the College of Saint Mary Magdalen in the University of Oxford, as owners in fee of lands at Wandsworth in the county of Surrey, to grant Building Leases; and for other purposes.

11. An act to incorporate the Society of the craft of Smiths and Hammermen of the burgh of Aberdeen; to confirm, amend, and regulate the administration of the estates and affairs of the said Society; and for other purposes relating to the Society.

12. An act to authorise the Sale of the Leith Exchange Buildings, and the application of the Price thereof in the Extinction of Debts affecting the same; to distribute and appropriate any balance that may arise from said Sale; and to wind up the concern.

13. An act to enable John Eden Spalding, Esq., under the authority of the Judges of the Court of Session in Scotland, to raise money by Sale or upon Security of the Estate of Holm and other Lands in the Stewartry of Kirkcudbright, for discharging certain debts and liabilities of the said John Eden Spalding; and for other purposes.

14. An act for the Regulation and Management of the Charity founded by Thomas Howell in or about the year 1540, and for other purposes.

15. An act for enabling the Trustees of the Settlement of Cary Charles Elwes, Esq., to grant Building and other Leases of Land, and to make Improvements on the settled Estates in the county of Lincoln, and to purchase Waterworks in the town of Glamford Briggs.

16. An act for enabling the Trustees of the settled Estates of the Right Honourable Henry John Reuben, Earl of Portarlington, situate in the county of Dorset to lay out the moneys arising under the Exercise of the Powers of Enfranchisement and Sale and Exchange contained in the Settlement of the same Estates in the Purchase of other Estates in England, Wales, or Ireland, in lieu of being restricted to laying out the same moneys in the purchase of Estates in England or Wales, as directed by the said Settlement.

17. An act for the Regulation of the Charity founded by George Jarvis, for the Benefit of the Poor Inhabitants of the several parishes of Stanton-upon-Wye, Bredwardine, and Letton, all in the county of Hereford; and for other purposes.

18. An act for enabling Leases, Sales, and Exchanges to be made of the Family Estates in the county of Southampton of the Reverend Sir John Barker Mill, Baronet, and for other purposes, and to be called "Barker Mill's Estate Act, 1852."

19. An act for enabling Leases Sales and

Exchanges to be made of the Family Estates, in the Isle of Wight and elsewhere in the county of Southampton, of John Brown Willis Fleming, Esquire, and for other purposes, and of which the Short Title is "Fleming's Estate Act, 1852."

20. An act to enable the Infant Tenants in Tail of the Estates in the county of York subject to the Will of Thomas Thornhill, of Fixby in the said county, Esquire, deceased, to grant building and other leases of parts of the said Estates, and to sell or exchange the same, and for other purposes.

21. An act for appointing and incorporating Trustees for the management of the Boys' and Girls' Hospitals of Aberdeen as one Institution, and for vesting the Estates and Revenues thereof in such Trustees, and for better managing such Estates and Revenues, and for other purposes connected therewith.

### PRIVATE ACT,

NOT PRINTED.

22. An act to dissolve the Marriage of Septimus Moore Hawkins, Esquire, with Harriette Lavinia Hawkins his now wife, and to enable him to marry again; and for other purposes.

### BARRISTERS CALLED.

*Michaelmas Term, 1852.*

#### LINCOLN'S INN.

Nov. 17.

Richard Darrell Darrell, Esq.  
Walter Bagehot, Esq.  
Frederick Boyd Marson, Esq.  
Codrington Thomas Parr, Esq.  
Edmund James, Esq.  
Arthur Benson Dickson, Esq.  
Samuel Greame Fenton, jun., Esq.  
William Knox Wigram, Esq.  
Joseph Adderley Chichele Helm, Esq.  
Richard Elwyn, Esq.  
Thomas Spiter Galland, Esq.  
William Pulley, Esq.  
John Rowe Kelley Ralph, Esq.  
John Coryton, Esq.

#### INNER TEMPLE.

Nov. 17.

John Paxton Norman, Esq., M.A.  
Charles Platt, Esq., B.A.  
Charles Joseph Thrupp, Esq., M.A.  
Julius Talbot Airey, Esq.  
Thomas Howard Fellows, Esq.  
John Copley Wray, Esq.  
Francis James Roughton, Esq.  
William Eccles, Esq., B.A.  
William Samuel Jones, Esq.  
James Oliver, Esq.  
George Alfred Lawrence, Esq., B.A.  
Robert Heyrick Palmer, Esq., B.A.  
John William Wray, Esq.  
Simeon Jacobs, Esq.  
Edward Beaufield Dawson, Esq.

Francis Newman Rogers, Esq., B.A.  
George John Cayley, Esq.  
Downes Wigglesworth, Esq., B.A.  
Hon. Robert Bourke.  
Donat John Hoote O'Brien, Esq., B.A.  
Charles Frederick Lucas, Esq.  
Charles Neve Cresswell, Esq., B.A.  
Charles Jeremiah Mayhew, Esq.  
Richard Formby, Esq., B.A.  
Edward Hacking, Esq.  
Henry Francis Shebbeare, Esq., B.A.  
William Henry Humphrey, Esq., B.A.  
Enoch Gibbon Salisbury, Esq.  
Thomas C. Mossom Meekins, Esq.  
James Joseph Hooper, Esq.  
Thomas Freeman Morse, Esq.

#### MIDDLE TEMPLE.

Nov. 17.

George Thornton Hamilton, Esq.  
Francis Talfourd, Esq.  
Charles Richard Hickes, Esq.  
Moreton Revell Phillips, Esq.  
Frederick Watson Lloyd, Esq.  
John Whitcombe, Esq.  
William Philip Dymond, Esq.  
Thomas Dunnett, Esq.  
Henry Gawler, Esq.  
Joseph Graham, Esq.  
William Robert Wilkinson, Esq.  
William Pearce, Esq.

#### GRAY'S INN.

Nov. 17.

Edward Bullen, Esq., M.A.

### NOTES OF THE WEEK.

#### LAW PROMOTION.

THE Queen has been pleased to direct letters patent to be passed under the Great Seal, granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland, unto Charles Robert Mitchell Jackson, Esq., Puisne Judge of the Supreme Court of Judicature at Bombay.—From the *London Gazette* of 3rd Dec.

#### RESULT OF THE EXAMINATION.

At the examination of the Candidates for admission on the Roll last Term, 117 had left their testimonials and were entitled to be examined. Of these 108 were passed, two did not attend, and seven were postponed—their answers not being deemed sufficient to warrant a certificate of fitness and capacity to act as attorneys and solicitors.

It will be observed by the Questions, which we published on the 27th November, that the Examiners carefully avoided any points regarding the Law or Practice recently abolished or altered, or the new enactments and rules and orders now in force. We presume that next Term it may be expected that the alterations

which have been effected, or some of them, will be included in the Examination.

#### RECORDERSHIPS.

C. S. Whitmore, Esq., the Recorder of *Lichfield*, has relinquished that appointment and accepted the Recordership of *Gloucester*; and H. W. Cripps, Esq., of the Oxford Circuit, has been appointed in his place.

#### NEW MEMBERS OF PARLIAMENT.

William Johnson Fox, Esq., for *Oldham*, in the room of John Duncuft, Esq., deceased.

James Henry Porteus Oakes, Esq., for *Bury St. Edmunds*, in the room of John Stuart, Esq., who has accepted the office of Vice-Chancellor.

The Honourable Adolphus Frederick Charles William Vane, commonly called Lord Adolphus Frederick Charles William Vane, for the city of *Durham*, in the room of Thomas Colpitts Granger, Esq., deceased.

The Honourable Montague Bertie, commonly called Lord Norreys, for *Abingdon*, in the room of Lieutenant-General James Caulfield, deceased.

George Hammond Whalley, Esq., for *Peterborough*, in the room of the Hon. Richard Watson, deceased,

[We intend in the present, as we did in the last Session, to give the names of new Members, in order that the attorneys and solicitors may remind them of their undoubted claim for relief against the Certificate Duty.]

#### SOLICITORS ELECTED AS MAYORS.

*Birmingham*.—Mr. Henry Hawkes.

*Durham*.—Mr. John Bramwell.

*Lancaster*.—Mr. John Hall.

*Preston*.—Mr. Peter Catterall.

*Salisbury*.—Mr. Edward Edmund Peach Kelsey.

[See the former List, p. 52, ante.]

### RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

#### Lord Chancellor.

*Myers v. Perigal*. Dec. 1, 1852.

CHARITABLE BEQUEST.—JOINT-STOCK SHARES.—STATUTE OF MORTMAIN.

Held, (reversing the decision of the late Vice-Chancellor of England, and confirming the certificate of the Court of Common Pleas on issue directed by Lord Chancellor Truro), that shares in a joint-stock bank were not within the Statute of Mortmain, although their property consisted of freehold and copyhold estates and mortgages for terms of years, inasmuch as such investments were only for the purposes of profit, and were not permanent.

THIS was an appeal from the decision of the late Vice-Chancellor of England (reported 16 Sim. 533). It appeared that the testator had, by his will dated in June, 1844, bequeathed to trustees in trust for certain charities, his residuary personal estate, which on reference to the Master was found to consist *inter alia* of 600 shares in the Durham and Northumberland District Bank, whose property consisted, amongst other things, of freehold and copyhold hereditaments, and money due on mortgage of freehold, copyhold, and leasehold hereditaments, but by the company's deed of settlement it was declared, that the shares should be considered as personalty.

The Vice-Chancellor having held that the shares were chattels real and within the Statute of Mortmain, this appeal was presented.

On the hearing before Lord Chancellor Truro, on 15th November, 1851, an issue had been directed to the Court of Common Pleas, who certified, on May 6 last, in favour of the

charities, and the case now came on upon that certificate.

*Elmsley, Faber, and Renshaw*, for the respondents; *Teed, Q. C., Wetherell, and Craig*, for the appellants.

The Lord Chancellor said, the shares were held for the purposes of profit and investment in trade, and could not be considered as permanently or substantially invested in land, and were similar to shares in a dock company. The appeal would therefore be allowed, the costs to come out of the residuary estate.

Dec. 1.—*Kekewich v. Marker*—Stand over.

—*1. Stump v. Gaby*—Order to set down application for second re-hearing.

#### Lords Justices.

*In re Carne and another, ex parte Bird*. Dec. 6, 1852.

AFFIDAVIT OF DEBT.—ATTESTATION OF NOTARY.—SUFFICIENCY.

Held, confirming the decision of Mr. Commissioner Stevenson, that an affidavit of debt was sufficient under s. 243 of the 13 & 13 Vict. c. 106, which was sworn before a justice of the peace of New York, and was attested by a notary of that town, showing that the person administering the oath was a magistrate and duly qualified to administer the same, and that it was unnecessary that the notary should be present when the oath was taken.

In this appeal from the decision of Mr. Commissioner Stevenson, admitting a claim against the estate, a question arose, whether the affidavit in support of the debt was suffi-

cient under the 12 & 13 Vict. c. 106, s. 243,<sup>1</sup> and which was sworn before Mr. O'Connor, a justice of the peace of New York, and was attested by a notary of New York, showing that the justice before whom the oath was taken was a magistrate of the city, and duly qualified to take oaths.

*Bacon* and *Eddis*, for the assignees, contended the notary's attestation should have stated he was present when the oath was administered.

*Hugh Hill* and *Eddis* for other parties.

The *Lords Justices* held, that the evidence was sufficient, and dismissed the appeal accordingly.

Dec. 2.—*In re Hewitson*—Stand over.

— 2.—*In re Lord Dinorben*—Order for payment out of Court of moneys paid in by committee on production of letters of administration to lunatic.

— 3.—*Foley v. Smith*—Direction as to hearing of exceptions to Master's report and further directions.

— 1, 4.—*Brenan v. Preston*—Injunction granted, with leave to apply.

— 2, 3, 4.—*Corporation of Liverpool v. Chorley Waterworks' Company*—*Cur. ad. vult.*

— 4.—*Lee v. Busk*—Appeal from the Master of the Rolls dismissed, with costs.

— 7.—*Esparte Evans, in re Wass*—Appeal allowed from Mr. Commissioner Evans.

— 7.—*In re Broadhurst, esparte Broadhurst*—*Cur. ad. vult.*

— 7.—*Ker v. Middlesex Hospital*—Hearing to take place before Lord Chancellor.

### Master of the Rolls.

*Penny v. Pickwick.* Nov. 20, 1852.

**BANKRUPT SHAREHOLDER IN COLLIERY COMPANY.—CLAIM BY ASSIGNEES FOR DIVIDENDS.—STATUTE OF LIMITATIONS.—ENTRIES IN BOOKS.**

It appeared that the assignees of a shareholder in a colliery company had not applied, after his bankruptcy in 1819, for the dividends declared in 1831 and subsequently, but the company had made entries in their books, whereby they acknowledged the shares to be existing shares: Held, that they could not maintain their defence of the Statute of Limitations to a claim on behalf of the assignees for payment of the dividends, and an order was therefore made for their payment, but without the profits thereon.

THIS claim was filed on behalf of the assignees.

<sup>1</sup> Which enacts, that "all affidavits to be made or used in matters of bankruptcy, or in any matter or proceeding whatever under this Act, shall and may be sworn "before a magistrate of the county, city, town, or place where any affidavit shall be sworn, or elsewhere before a magistrate and attested by a notary, or before a British minister, consul, or vice-consul."

ness of Mr. Brickdale, for payment of the dividends on certain shares held by him, in the Camerton Colliery Company. It appeared that the shares were for a time unproductive, the first dividend being declared in 1831, and that Mr. Brickdale became bankrupt in 1819, but the plaintiffs had not applied for payment of the dividends. The defendants had, in 1831, entered in their books a sum of 50*l.*, as carried over to the account of the proprietor of the share late Brickdale's, and also in 1838 a similar sum, and in 1849, a resolution that the dividends in respect thereof should be carried to a separate account, and be dealt with as the proprietors should afterwards determine.

*R. Palmer* and *Kinglake* for the plaintiffs; *Roupell* and *Baggallay* for the defendants, contra, on the ground that the claim was barred by the Statute of Limitations.

The *Master of the Rolls* said, that as the defendants had treated the share as an existing one by the entries in their books in 1831, 1838, and 1849, they could not maintain their defence, and an order was therefore made for payment of the dividends, but not of the profits thereon.

Dec. 1.—*Wiglesworth v. Wiglesworth*—Order for payment of money into Court.

— 2.—*Foligno and others v. Ritchie and another*—Decree for specific performance of contract.

— 2.—*Beale v. Symonds*—*Cur. ad. vult.*

— 3.—*Metcalfe v. Breese*—Injunction granted.

— 3.—*Clark v. May*—Decree for specific performance of agreement, without costs.

— 3, 4.—*Morris v. Gaultier and another*—Injunction granted and receiver appointed.

— 6.—*Maclaren v. Stainton and others*—Motion refused to dissolve injunction.

— 7.—*McDonnell v. Heslridge*—Judgment on construction of settlement.

### Vice-Chancellor Turner.

*London and North Western Railway Company v. Lady Bray.* Dec. 1, 1852.

**LANDS' CLAUSES' ACT.—PETITION FOR PAYMENT OF DIVIDENDS ON PURCHASE-MONEY TO TENANT FOR LIFE.—AFFIDAVIT OF TITLE.**

Held, that the affidavit of title in support of a petition for the payment of the purchase-money of lands taken by a railway company under the 8 Vict. c. 18, must be made by the petitioner, and not by the solicitor; and held, that an affidavit is unnecessary where the order sought is for payment of the interest or dividends only to the tenant for life.

In this petition for the payment of the dividends of the purchase-money for lands taken by the above railway company under the 18 Vict. c. 18, on behalf of the tenant for life, the affidavit as to her title was sworn by the solicitor.

Kent in support.

The Vice-Chancellor said, that the affidavit, affirming the title and stating no one else was entitled thereto, was only required to be made where the application was for payment of the principal, and that it should be made by the petitioner herself, but that it was not necessary where the application was for the interest or dividends.

Dec. 1.—*Atkinson v. Oxford, Worcester, and Wolverhampton Railway Company*—Order to enlarge publication.

— 1.—*Pinfold v. Pinfold*—Bill dismissed, without costs.

— 1.—*Young v. Hodges*—Decree for administration of estate.

— 2.—*Keyse v. Haydon*—Plaintiff held entitled to decree on claim for specific performance of contract, and stand over for requisitions as to title.

— 2.—*Harman v. Richards*—Decree for account.

— 4.—*Money Penny v. Baker and another*—Injunction granted.

— 2, 3, 4, 6.—*Fordham v. Wallis*—Cur. ad. vult.

— 6.—*Crofts v. Middleton*—Order for appointment of examiner to take examination of witnesses *vidu voce* in Australia.

— 6, 7.—*Fitzwilliam v. Kelly*—Cur. ad. vult.

— 7.—*Cowman v. Harrison*—Part heard.

#### Vice-Chancellor Kindersley.

*In re Atkinson's Trust.* Nov. 19, 1852.

LEGATEE.—EVIDENCE OF DEATH.—ADMINISTRATION TO ESTATE.

*A reference had been directed to the Master as to the time of the death of a legatee under the will of a testator who died in May, 1830, and he reported his death in 1830, but that there was no evidence whether it took place before or after the testator's death: Held, under these circumstances, that administration to his estate must be taken out.*

It appeared upon the reference to the Master in this case as to the time of death of Thomas Atkinson, a legatee under the will of the testator, who died in May, 1830, that there was evidence of his having taken a passage for Montreal in 1830 on board a ship, which had foundered and all the passengers had been lost. But the Master reported that it was uncertain whether this took place or not before May in that year. A question had arisen, whether it was necessary to take out administration to his estate.

C. P. Cooper and Tripp now applied for payment of the money.

The Vice-Chancellor said, that as there were no materials on which to decide whether the legatee died before or after the month of May, letters of administration must be taken out to his estate.

Dec. 1.—*In re Galway and Ennis Junction Railway Company*—Appeal allowed from Master's order for call.

— 2.—*In re Dover and Deal Railway Company, ex parte Mowatt*—Motion refused to discharge order for call.

— 3.—*In re Creed's Trust*—Compromise agreed to.

— 4, 6, 7.—*Oxford, Worcester, and Wolverhampton Railway Company v. South Staffordshire Railway Company*—Injunction granted.

#### Vice-Chancellor Stuart.

*Shipton v. Rawlins.* Dec. 7, 1852.

MARRIED WOMAN.—BREACH OF TRUST.—LIABILITY OF SEPARATE ESTATE.

*Held, that the separate estate of a married woman was liable for her breach of trust as trustee and executrix, in allowing certain premises held under church leases, to fall out of repair, and for omitting to renew, in accordance with the trusts of the will, and that her husband was liable in respect of so much as occurred during coverture, and that the co-trustees were likewise personally liable.*

THIS suit was instituted for the purpose of charging the separate estate of Mrs. Sentence, the wife of a defendant, for her breach of trust as trustee and executrix, under a will, and also to render her husband and co-trustees personally liable for the same. It appeared the breach complained of was, their having allowed certain premises held under church leases to fall out of repair, and also omitted to renew, in compliance with the trusts of the will whereby they acted. The property now sought to be charged had been appointed, under a power, among the defendants.

*Follett and Hare* for the plaintiffs; *Wigram, Malins, Lewin, Lonsdale, and Batten*, for the defendants.

The Vice-Chancellor said, that her separate estate was liable, and the husband in respect of so much of the breach which took place during her coverture, and also the co-trustees.

Dec. 1.—*James v. Lord Wynford*—Judgment on construction of will.

— 1.—*Collett*—Injunction granted.

— 2.—*Attorney-General v. Attwood*—Cur. ad. vult.

— 3.—*Stonhouse v. Gaskill*—Judgment on special case, as to construction of will.

— 4.—*Lord Middleton v. Losh*—Judgment on construction of will.

— 6.—*Slater v. Oldknow*—Issue directed at law.

— 6.—*Ex parte Incumbent, &c. of Brompton, in re Kensington Charities*—Stand over.

#### Court of Queen's Bench.

*Regina v. Ashton.* Nov. 25, 1852.

LICENSING ACT.—CONVICTION OF PUBLICAN FOR PERMITTING UNLAWFUL GAME IN HIS HOUSE.



*Rule absolute for a certiorari to remove a conviction by magistrates of a publican for knowingly suffering a certain unlawful game, to wit, the game of dominoes, to be played in his house, contrary to the 9 Geo. 4, c. 61, and the tenor of his licence.*

Whately showed cause against this rule, which had been obtained for a certiorari to remove a conviction before the magistrates of West Bromwich of Richard Ashton, a publican, for knowingly suffering a certain unlawful game, to wit, the game of dominoes, to be played in his house, contrary to the statute (9 G. 4, c. 61), and the tenor of his licence, and whereby he had forfeited the sum of 5l.

The Court (without calling on Archbold in support of the rule), said, that as there was no authority cited to show the game of dominoes was an unlawful game, the conviction was insufficient, and the rule must be made absolute.

Dec. 1.—*Morris v. Wilde*—Order for new trial of County Court plaint. on the ground of misdirection.

—1.—*Fearnley v. Great Northern Railway Company*—Stand over for re-statement of case.

—1.—*Rook v. Midland Railway Company*—Appeal dismissed from County Court.

—1.—*Rawling v. Pontifex*—Decision of County Court affirmed.

### Court of Common Pleas.

*Ford, appellant; Smedley, respondent.* Nov. 12, 1852.

REFORM ACT.—PAYMENT OF ASSESSED TAXES.—NOTICE FROM COLLECTOR UNNECESSARY.

Held, affirming the decision of the revising barrister, that the appellant was not entitled to be registered as a voter, in respect of property for which he had not paid the house tax (payable before Jan. 5) until July 30, although there had been no demand thereof by the collector.

Kinglake, S. L., and Keane, appeared in support of this appeal, from the decision of Mr. Macqueen, the revising barrister, for rejecting the claim of the appellant, in respect of property in the parish of St. Clement's Danes, upon the ground that he had not paid the house tax, which was payable before Jan. 5, until July 30. It appeared it had not been demanded by the collector. They referred to 2 Wm. 4, c. 45, s. 27; 43 Geo. 3, c. 99, ss. 1, 3, 12; 43 Geo. 3, c. 161, s. 23; 48 Geo. 3, c. 141, s. 1, rule 3, class 3.

Wordsworth, for the respondent, was not called on.

The Court said, that the Reform Act required the taxes, which were due, to be paid without demand, in order to entitle a householder to his franchise, although they could not be enforced without such demand, and the decision was accordingly affirmed, with costs.

### Court of Exchequer.

*Chew v. Holroyd.* Nov. 25, 1852.

COUNTY COURTS' ACT.—TITLE IN QUESTION.—PORTION OF HOUSE.—PROHIBITION.

In an action by the plaintiff, who was the owner of a cottage, against the defendant for breaking and entering two apartments and removing his furniture therefrom, it appeared a question was raised, as to whether the plaintiff had let the whole or only a part of the cottage to the defendant: Held, that as the plaintiff's title to a portion of the house for the time being came in question, the County Court had not jurisdiction under the 9 & 10 Vict. c. 95, s. 58, and a rule was made absolute for a prohibition.

THIS was a rule nisi granted on Nov. 4 last, for a prohibition on the Judge of the Cheshire County Court against further proceeding in this plaint which was brought to recover damages for breaking and entering the plaintiff's two apartments and removing his furniture therefrom. An objection was taken to the jurisdiction of the Court under the 9 & 10 Vict. c. 95, s. 58, on the ground that the title of the plaintiff, who was the owner of the cottage, to the apartments came in question, and that he had let the whole to the defendant.

Hugh Hill and Wheeler showed cause against the rule; Cowling and Cole, in support, were not called on.

The Court said, that as the plaintiff's title for the time being to a portion of the cottage came in question, the County Court had not jurisdiction, and the rule was accordingly made absolute.

### Court of Exchequer Chamber.

*Clarke v. Gent.* Nov. 29, 1852.

MUNICIPAL CORPORATIONS' ACT.—BURGESS.—PENALTY ON CHURCHWARDEN NEGLECTING TO SIGN.

Held, affirming the decision of the Court of Exchequer, that a churchwarden was liable for penalties under s. 48 of the 5 & 6 Wm. 4, c. 76, for neglecting to sign the burgess-roll under s. 15, which was delivered to the town clerk.

THIS was an action to recover penalties under the 5 & 6 Wm. 4, c. 76, s. 48, against the churchwarden of the borough of Harwich for not having signed the burgess-roll which was delivered to the town clerk in accordance with the provisions of s. 15. The Court of Exchequer having decided in favour of the plaintiff, the churchwarden brought this writ of error against their decision.

Shee, S. L., in support; Lush, contra.

The Court affirmed the judgment of the Court below.

Dec. 2.—*Risington v. Cannon*—Chr. ad. vult.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 18, 1852.

## LAW BILLS BEFORE PARLIAMENT.

### LAW OF EVIDENCE AND PROCEDURE.

The last Number (p. 93) contained a brief analysis of the Bill introduced by Lord Brougham in the House of Lords, 'for further amending the Law touching Evidence and Procedure;' but the variety and importance of the points embraced in it, and the understood intention of the noble and learned mover to press it forward immediately after the Christmas recess, renders it desirable that our readers should be prepared for the discussion, by a more precise and accurate knowledge of the provisions of the Bill, than could be gleaned from a perusal of the marginal abstract.

The Bill revives the question so frequently discussed in these pages, and upon which the two Houses of Parliament differed in the Session of 1851, as to the expediency of rendering a wife a competent witness for or against her husband in civil proceedings. It was for some time doubted whether the Act 14 and 15 Vict., c. 99, effected the avowed intention of the House of Lords in passing the Bill, by excluding the evidence of the wife, but that doubt has since been set at rest by judicial decisions,<sup>1</sup> and it is now sought, by Lord Brougham's Bill, to alter the law, and induce the House of Peers to renounce its expressed opinion, by enacting that the husbands and wives of the parties to any suit, action, or other proceeding, "shall be competent and compellable to give evidence, either *vis à voce* or by deposition according to the practice of the Court," except in criminal cases, or "in any proceeding instituted in consequence of adultery." To meet

the objection arising from the apprehended danger of interfering with the freedom of communication between married persons, it is now proposed to enact, "that no husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage."

As to *payment of money into Court*, it will be recollected that the Common Law Procedure Act<sup>2</sup> allows payment into Court by a defendant, and by leave of the Court, by one or more of several defendants, in all actions, "except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching of the plaintiff's daughter or servant." By Lord Brougham's Bill it is proposed to repeal all previous enactments respecting payment of money into Court, to sweep away the exceptions contained in the Act 15 and 16 Vict., c. 76, as above enumerated, and to provide that in all personal actions any defendant may, without rule or order, pay into Court money, by way of compensation or satisfaction, either with respect to the whole or to part only of the plaintiff's claims.

The existing law as to the *effect of payment of money into Court* cannot certainly be considered as either clear or satisfactory. Payment of money into Court in actions founded on a special contract admits the contract declared on;<sup>3</sup> whilst payment of money into Court on a general indebitatus count, admits nothing more than that a cause of action exists with damage to the

<sup>1</sup> *Stapleton v. Craft*, 21 Law J., 247, Q. B., and *Barbat v. Allen*, 7 Exch., 609.

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<sup>2</sup> 15 and 16 Vict., c. 76, sects. 70 to 73.

<sup>3</sup> *Speck v. Phillips*, 5 Mees. and W., 279.

extent of the amount paid into Court,<sup>4</sup> and it has been lately held that the same principle applies to actions of tort.<sup>5</sup> The present Bill seeks to get rid of all these distinctions by declaring that :—

“The payment of money into Court by any defendant, whether generally or partially, or on some special count, shall not be deemed an admission by him that any cause of action existed against him, or that he was legally bound to have paid anything; and the plea of such payment may be pleaded either alone or with any other plea.”

The question how far a party can discredit his own witness, is one upon which the decisions of the Courts have not been uniform, and some degree of uncertainty prevails as to the power of contradicting a witness upon matter collateral to the issue, and also how far witnesses may be cross-examined as to their written statements without producing the writings.<sup>6</sup> The Bill proposes to deal severally with these questions, by the following declaratory enactments.

“A party producing a witness cannot impeach his credit by general evidence of bad character, but he may cross-examine and put leading questions to him, if he appears to the Court to be adverse to the party; and the party may likewise, at the discretion of the Court, contradict his own witness by other evidence, and may also, at the like discretion, prove that he has made at other times statements inconsistent with his present testimony; but before the last-mentioned proof can be given the statements must be related to the witness, with the circumstances of time, places, and persons present; and he must be asked whether he has made such statement or statements to that effect, and if he has he must be allowed to explain them.”

“A witness may be cross-examined touching anything affecting his credit by the party against whom he is produced, and may be contradicted by other evidence, though the subject matter of such cross-examination and contradiction may be collateral to the matter in question, but the Court may stop such examination or contradiction, if it considers the inquiry irrelevant.”

“A witness may be cross-examined as to his having made on other occasions statements inconsistent with his present testimony or calculated to affect his credit, without the party so cross-examining him being obliged to declare whether the statements were made verbally or were reduced to writing; but if it

appears that the statements referred to in the cross-examination were reduced to writing, the writing must be produced if required by the opposite party or by the Court, that the witness may be examined respecting it, or otherwise so much of the cross-examination of the witness as relates to the contents of the writing shall be rejected.”

In a social view, as well as regards the administration of justice, it is of manifest importance to determine, how far a witness should be protected from answering questions tending to degrade or criminate him? The Bill before us proposes to deal with this delicate portion of the Law of Evidence by the following enactment :—

“No witness shall be protected from answering any question on the ground that his answer may degrade him, or may show or tend to show that he has been guilty of any offence or misconduct, or that he has done anything which may render him liable to any penalty, forfeiture, or ecclesiastical censure; but no answer to any such question shall be admissible in evidence in any proceeding against him, except in a prosecution for perjury assigned upon such answer, or shall subject him to any punishment, or shall justify his detention by the Court, except on the ground of perjury, prevarication, or contempt; and the Court may stop any such questions or answers if it considers the inquiry irrelevant.”

Some important changes are also proposed to be effected by this Bill, in the law and practice as to the *proof of handwriting*; so that handwriting may be proved or disproved, not only by a witness who has seen the person write or seen writings purporting to be his, upon which the witness has acted or been charged; but also by comparing the document in question with any writing proved to be genuine, or admitted, or treated as such by the party against whom the evidence is offered. The party whose handwriting is disputed may also be called upon to write in Court, and such writing may be compared with the document in dispute; and when a *writing is more than thirty years old* it may be compared with writings “respected and acted upon” as genuine by persons interested in the fact. But where handwriting is sought to be disproved by comparison, the writing compared must be written prior to any dispute as to the genuineness of the document in question.

It is also proposed to declare that, except as to orders of affiliation, a *single witness*, though uncorroborated, may prove or disprove any fact in any proceeding.

It is further proposed to assimilate the practice of the Superior Courts to that of

<sup>4</sup> *Kingham v. Robins*, 5 Mees. and W., 94. *Archer v. English*, 1 M. and Gr. 873.

<sup>5</sup> *Cook v. Hartle*, 8 C. and P., 569. *Story v. Finsie*, 6 Exch., 121.

<sup>6</sup> See *Macdonnell v. Evans*, 21 Law J., 141, C. P.

the County Courts, as regards *trial by jury*, by enacting that in every civil proceeding "the Judge at Nisi Prius shall decide the issues of fact without the intervention of a jury," unless either of the parties insert in the margin of the issue the words "by jury," in which case a jury is to be summoned, and try the case as heretofore.

The *production of documents* is proposed to be enforced by summons returnable before a Common Law Judge at Chambers, calling upon the adverse party to state on affidavit, whether he has any and what documents in his possession, or power relating to the matter in dispute, and why such documents should not be inspected, copied, or, if necessary, stamped, at the expense of the party taking out such summons. The power to examine an adversary before trial is sought to be conferred by the following provision:—

"At any time after the commencement of any civil action, or other civil proceeding in any of the Superior Courts of Common Law, either party thereto may, on filing an affidavit of himself or his attorney, stating the deponent's belief to be that the party cannot safely proceed to trial without the information required, take out a summons, returnable before a Common Law Judge at Chambers, calling upon his opponent to show cause why he should not, prior to the trial, be cross-examined on oath, as to the matters in dispute, by or on behalf of the party taking out the summons, in the presence of some examiner *specially appointed by the Judge*; and every Judge before whom any such summons shall be heard, shall make such order therein as shall appear to him to be reasonable and just; and every examiner so appointed shall conduct the cross-examination, and take down and return the depositions, as nearly as may be in the mode now or hereafter to be in use in Courts of Common Law, with respect to a witness about to go abroad, and not expected to be present at the trial of a cause."

In all proceedings instituted by or on behalf of the Crown, except prosecutions for treason, felony, or misdemeanour, it is proposed that *the Crown*, if successful, shall receive costs, and if it fails, shall be liable to pay costs, as an ordinary suitor; that in all proceedings, civil and criminal, those representing the Crown shall not have any right to begin or reply beyond ordinary suitors; and that the Court may order persons tried for indictable offences and acquitted, to have their costs paid by the county, or in certain cases by the Treasury.

No objection as to the admissibility in evidence of any document on the ground of its not being duly stamped is to prevail, if

such document is shown to be in existence ten years before the time at which it is tendered in evidence. It is further proposed, that her Majesty in Council may appoint certain counties, in which offences committed in other counties may be tried, and that the Queen's Bench, at the instance of the Attorney-General, may appoint the trial of offenders in any county, upon ten days' notice, and an undertaking to pay the expense of bringing witnesses to the place of trial.

It is also provided, that, not only Courts of Oyer and Terminer and General Gaol Delivery, but also Courts of Quarter Sessions, may issue *writs of subpoena* to certify and produce documents to be *available in any place in England or Wales*; and if such subpoena is not duly attended, the Court by which it is issued is to certify the default to the Queen's Bench, which is to proceed against the defaulter as if the writ had issued from that Court; but the Queen's Bench is not to punish for such default, except in criminal cases, unless the reasonable expenses of the witnesses have been tendered when the writ was served.

Having fully laid before our readers the varied and startling provisions of this Bill, without comment, and by so doing enabled them to form an independent judgment of the merit, of its several provisions, we reserve to a more convenient opportunity the observations which its consideration suggests.

## COURT OF BANKRUPTCY.

### REVENUE AND EXPENSES.

THE decrease in the business of the Court of Bankruptcy, and the insufficiency of the Revenue to meet its expenses, was noticed by the Lord Chancellor in his statement in the House of Lords at the commencement of the Session. The accuracy of that statement is confirmed by a return lately made to the House of Lords, and which is subjoined. From this return it appears, that in the year 1851, the expenditure of the Court exceeded the receipts by the sum of 14,186*l.* 3*s.* 4*d.* It is to be observed, however, that no less than 24,426*l.* 17*s.* 4*d.* is paid for *compensations*. In other words, the suitors of the Court are now paying the expenses of alterations made in its constitution just 21 years ago, when the present Court was established under the Act 1 & 2 Wm. 4. c. 56.

If the principle so manfully and explicitly

laid down by Lord St. Leonards, "that the costs of maintaining our judicial establishments should be paid by the country, and not by the suitors," be applied to the Court of Bankruptcy, the present revenue will be more than adequate to meet all just claims upon it, and allow a large reduction to be made in respect of the taxes paid by suitors in the shape of Court fees. The suitors now pay for the salaries of Commissioners and officers, compensations heaped up with no unsparing hand, and all the expenses of maintaining the Court, and in addition to this, they pay for the administration of every estate that comes into the Court to be distributed, by a per centage to the official assignees, fees to the messengers,

&c. In short, the expenses of the Court deter suitors from resorting to it, and compel them to avail themselves of private arrangements for winding up and distributing the assets of insolvent traders. At the outset, and before the threshold of the Court is passed, the suitor, or his solicitor on his behalf, has to disburse a fee of 10*l.*, now paid, under the Bankrupt Law Consolidation Act, Schedule C., in the shape of a stamp, upon presenting the petition for adjudication or arrangement. The imposition of so large a duty upon the initiative proceeding, would almost suggest, that the intention was to discourage those desirous of seeking relief through the instrumentality of the Court.

**RETURN TO AN ORDER OF THE HOUSE OF LORDS, DATED 12TH MARCH, 1852, SHOWING**

The gross Revenue of the Court of Bankruptcy for the year ending the 31st December, 1851; the various sources of such Revenue (including the amount received as per centage on the gross Assets of Bankrupt Estates, and the amount received for Stamp Duties on Proceedings in Bankruptcy) also the charge on such Revenue for the same period, showing the gross amount paid by the Accountant in Bankruptcy out of such Revenue for Salaries, Compensations, Retiring Annuities, Services, and Travelling, and other Expenses: also, the amount of Stock standing to the credit of the Bankruptcy Fund Account on the 31st of December, 1851, and of what that Account is composed.

*The Chief Registrar's Account.*

Gross Revenue of the Court of Bankruptcy for the Year ending 31st Dec. 1851.			Charge on such Revenue for the same period.		
Sources of Income.	Items.	Total.	How disposed of.	Items.	Total.
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
Per centage on Assets of Bankrupts' Estates	25,801 4 9		Salaries . . . . .	63,082 18 1	
Amount of Stamp Duties for proceedings in Bankruptcy . .	12,626 8 10		Compensations . .	24,426 17 4	
Interest on Bankruptcy Fund Account . . .	39,269 15 11		Retiring Annuities .	2,333 6 8	
Sundries by Registrar of Meetings and others . . . . .	1,010 14 6		Expenses, Travelling, &c., and Bank Remuneration . . .	4,187 4 9	
Payment in by Mr. Seton, Clerk of her Majesty's Hanaper .	1,085 19 6				
		79,794 3 5			
Deficit on Income . . .		14,186 3 4			
		£ 93,980 6 10			93,980 6 10

*The Bankruptcy Fund Account.*

Total amount of Stock standing to the Credit of the above Account on the 31st Dec. 1851, viz.

	£ s. d.		£ s. d.
Stock arising from Investment of, 1,048,281 17 6		Cash Surplus on Bankrupt Estate, 1,155,725 5 5	
Ditto ditto 29,518 17 6		Ditto Unclaimed Dividend	
Ditto ditto 60,000 0 0		Ditto Account . . . . .	32,127 16 5
Ditto ditto 15,000 0 0		Ditto 'Interest on Bankruptcy Fund Account . .	66,424 15 10
		Ditto 'Secretary of Bankrupts Account . . . .	16,541 3 9
		Stock 1,370,819 3 5	

RICHARD CLARKE, The Accountant in Bankruptcy.

<sup>3</sup> These two Accounts are now merged in "The Chief Registrar's Account" by Bankrupt Law Consolidation Act.

## ATTORNEYS' ANNUAL CERTIFICATE TAX.

THE protracted debate on the Chancellor of the Exchequer's financial plan will prevent the introduction of the Bill to Repeal the Certificate Duty before Christmas. Notice has been given by Lord Robert Grosvenor to bring on the motion immediately after the recess.

It may be well to place before our readers the revised statement of the Incorporated Law Society in support of the measure. The undisputed facts here set forth, and the reasons for the repeal, may be useful in preparing petitions in the country,—to be in readiness when the fitting time arrives to present them.

"The principle of the Bill for the Repeal of this Tax was affirmed by the House of Commons in the Sessions of 1850 and 1851, on five several divisions.

"The continuance of this oppressive impost was by some attempted to be excused on the ground that many other classes, as well as attorneys, are burdened with personal taxes for the privilege of exercising their callings; and it was alleged that the attorneys sought to be wholly exempted from such taxes. This is not true: the attorneys pay three different personal taxes; while all other classes who are personally taxed pay but one.

"The taxes to which attorneys are subjected, are, first, a stamp of 120*l.* upon the articles of clerkship, and this on an average produces annually 72,000*l.*; secondly, a tax of 25*l.* upon admission, producing annually 12,000*l.*; and thirdly, the tax of which they complain as an intolerable grievance, namely, 12*l.* yearly for a certificate, if practising in London, Edinburgh, or Dublin, and 8*l.* yearly if practising in any other part of the United Kingdom; this produces annually upwards of 118,600*l.* This treble taxation, amounting in the whole to upwards of 200,000*l.* per annum, the attorneys have borne for a long series of years.

"No other profession or trade is burdened with a treble personal tax for the privilege of exercising the calling, whether levied by means of a stamp or a licence, whilst no other profession is subject to a prescribed scale of charges, rigidly applied on taxation, which no special contract is allowed to modify or supersede. The licences of auctioneers, bankers, pawnbrokers, &c., producing to the revenue 103,937*l.*, are the only instances of duties charged upon this permission to exercise any calling that bear the slightest resemblance to the Annual Certificate Tax on Attorneys, Proctors, and Notaries,—all others being charged, not on the person, but on articles liable to Exercise and other duties, and therefore paid in effect by the consumers. But the Repeal of the Certificate Tax (one of the three personal taxes, and the most grievous to which attor-

neys, proctors, and notaries are liable) cannot in any way affect the continuance of the revenue derived from licences. Two of the three personal taxes producing upwards of 84,000*l.* per annum, will remain.

"Apart, therefore, from all considerations of public policy, and the principles of a sound political economy, the attorneys, proctors, and notaries, upon this special ground also, rest their claim to be relieved from the third of the three personal taxes, to which they alone are subjected: and (although they are more highly taxed in the outset than any other profession or trade) they submit to bear the burden of the other two personal taxes, which produce annually upwards of 84,000*l.*, so long as other professions and trades are subjected to personal taxes. It is to be recollected, that the exclusive right to practise is held equally by the other branch of the Legal Profession, and by the practitioners in Physic: yet they are not taxed so highly in entering the profession, and are not taxed at all for carrying it on.

"The parties subjected to the Certificate Tax are relieved from the necessity of adducing arguments to prove its injustice; because, during all the debates upon the Bill for repeal in it, no one attempted to justify the tax."

## NOTICES OF NEW BOOKS.

*The New System of Common Law Procedure according to the Common Law Procedure Act, 1852.* By J. R. QUAIN, Barrister-at-law, and H. HOLROYD, Special Pleader. London: Butterworths, 1852. Pp. 234.

We have here another competitor for professional attention in the exposition of the Common Law Act of last Session. The learned editors give the several sections of the Act verbatim, accompanied by copious notes. We have already laid before our readers several remarks and annotations on the prominent parts of the statute, and shall hereafter call attention to the practical working of the new system. Mr. Quain and Mr. Holroyd have rendered good service to the practitioners in their commentary on the various sections of the Act. We extract the following as examples of their learned labors, applicable to the authority and retainer of attorneys.

On the 126th section, authorising the sheriff or gaoler to discharge a prisoner on a written order of the attorney in the cause, the authors observe that—

"This section has been passed to remove the difficulty experienced by sheriffs in discharging defendants in custody under a *ca. sa.* since the decision of *Savory v. Chapman*, 11 A. & E. 889. By that case, followed by *Connop v. Chellis*, 2 Eech. 464, it was decided that the

plaintiff's attorney had no authority to discharge a defendant from custody without receiving the amount for which execution issued, unless he had the plaintiff's express authority for so doing. In the case of a *fi. fa.* the attorney in the action has authority to order the sheriff to withdraw from possession. (*Levi v. Abbott*, 4 Exch. 588.)"

By section 128 an execution may issue within six years from the judgment without revival; and consequently the attorney's retainer appears to continue for that period.

The 130th section relates to proceedings upon an application to enter a suggestion for revival of judgment. On this it is remarked that—

"Formerly the retainer of the attorney in the action continued after judgment, so as to warrant him in issuing execution within a year and a day, or afterwards in continuation of a former writ issued within that time. (*Bevins v. Hulme*, 15 M & W. 96.) Now it is apprehended that the effect of section 128 is to prolong the retainer for six years from the recovery of the judgment for the same purpose."

The marriage of a female plaintiff or defendant does not, according to the 141st section, abate the action or terminate the retainer of the attorney, unless by the express countermand of the husband. The note on this enactment is as follows:—

"Under the law as it stood when the present Act came into operation, the coverture of a woman plaintiff might have been pleaded in abatement, whether she married before or after action brought, and if she married after the defendant had pleaded in bar, her coverture might still be pleaded in abatement *puis darrien* continuance. The position of a woman defendant was somewhat different; if she married before action and was sued as a *feme sole* she might plead her own coverture in abatement, but if she married after action brought, her coverture was then not pleadable in abatement, for permitting such a plea would be to allow her to defeat the action by her own voluntary act—(*King v. Jones*, 2 Str. 811)—nor if taken on a *ca. sc.* in such a case would she be discharged, though she had no separate property. (*Beynon v. Jones*, 15 M & W. 566.)

"Now, by the present section, the plea of coverture in abatement, either of the plaintiff's or defendant's coverture, is abolished, and the result is, that in all cases where a *feme covert* is liable to an action, or a cause of action is vested in her, or, in other words, where her coverture could formerly have been objected to or taken advantage of only by plea in abatement, she may now sue or be sued as a *feme sole*. It will be observed that where the judgment is *against* the wife, it may be executed against her alone, or by suggestion or writ of

revivor, under section 129, against the husband and wife; but where the judgment is *for* the wife, it may be executed by the husband's authority in the wife's name, without any writ of revivor or suggestion. This was substantially the old law, where the coverture might have been, but was not, pleaded in abatement. (*Walker v. Golling*, 11 M. & W. 78.)

"From the enactment that the marriage of a woman defendant shall no longer cause the action to abate, but it may notwithstanding be proceeded in to judgment, and that such judgment may be executed against the wife alone, or by suggestion or writ of revivor against the husband and wife, it seems to follow that error in fact can no longer be brought by the husband and wife in such a case, as was formerly done where the wife was married at the time of action brought, but had neglected to plead her coverture in abatement. (2 Wms. Saund. 101 f.)

"One advantage of proceeding in the name of the wife alone, without joining the husband, may be pointed out. If she die before trial, the action may be continued by or against her representatives under sections 137 and 138, whereas if the proceedings are taken in the joint names of husband and wife, and the action is one to which she is necessarily a party, it would abate by her death, except in actions within section 40, and in that case it could not be continued by or against her representative, but a fresh action must be brought."

It is also a question under section 148 whether in proceedings in error an attorney can now be changed without the order of a Judge.

"A writ of error was considered always as a new action, and might be brought or prosecuted by a new attorney, without obtaining the usual order to change the attorney (*Batchelor v. Ellis*, 7 T. R. 337), but though the proceeding to error is now to be a step in the cause, it is apprehended that it is not intended that it should be a step in every cause, but only in those causes in which a writ of error might formerly have been issued. It is not clear whether the word 'cause' used in this section includes criminal cases; but it will doubtless be deemed to extend to proceedings on mandamus, prohibition, or *quo warranto*. In section 222 the expression 'civil causes' is used, from which it may be inferred that the word 'cause' was intended to include criminal as well as civil proceedings."

The note on the 203rd and two following sections, relating to the defendant's confession in an action of ejectment, to be *attested by his attorney*, is also worthy of attention. It is remarked that—

"Under these sections the defendant in ejectment may confess the action as to the whole or part of the property claimed, by merely giving a notice to the claimant to that effect; the claimant will then be able to sign

judgment on that confession. It is provided that the notice shall be headed in the Court and cause, signed by the defendant, and his signature attested by his attorney. It is apprehended that such a notice is not a cognovit within 1 & 2 Vict. c. 110, and need not be subscribed with the formalities required by that statute. (See *Doe v. Howell*, 12 Ad. & Ell. 696; *Bray v. Manson*, 8 M. & W. 668; *Baker v. Flower*, 8 M. & W. 670.) The present section enacts merely that the notice shall be attested by the defendant's attorney. The notice cannot be properly given until appearance has been entered by the defendant, which must now be entered by himself or his attorney. Formerly if a cognovit were given before appearance, it was held it impliedly authorised the plaintiff to enter an appearance for the defendant. (*Ricardson v. Daley*, 4 M. & W. 384.) But as an appearance according to the statute by the plaintiff for the defendant is now abolished, the correct course will be for the defendant to appear either in person or by attorney before the notice to confess the action is served."

## LAW OF ATTORNEYS.

### RE-ADMISSION AFTER HAVING BEEN STRUCK OFF THE ROLL.

The following report, relating to the case before the Lord Chancellor of Mr. John Smith, of Birmingham, is extracted from *The Times* of 13th November. This case has led to a material alteration in the law and practice relating to the appointment of Masters Extraordinary or Commissioners for taking affidavits in the Court of Chancery:—

"Sir W. Wood (Mr. Tripp with him) appeared in support of a petition to have the name of Mr. Smith, late a solicitor at Birmingham, restored to the roll of solicitors. On the 15th of April last, in consequence of an affidavit, purporting to have been sworn before Smith, as a Master Extraordinary in Chancery at Folkestone, turning out to have been in reality sworn in Boulogne, inquiry was instituted by the Lord Chancellor, when it was discovered that Smith had never been appointed a Master Extraordinary at all. His Lordship then directed Smith to account for his having executed that office without authority, and on the following day, in consequence of no satisfactory reason being given, he ordered him to be struck off the roll of solicitors. Since then a rule had been obtained in the Queen's Bench for Smith to show cause why he should not also be removed from the list of attorneys, and that rule had been enlarged until the present petition should have been heard. In support of the present application, counsel now read several affidavits, that of Mr. Smith being to the effect that he had always acted under the impression that at the latter end of 1841, or the beginning of 1842,

he was appointed a Master Extraordinary in Chancery; that at the period named he was at the office of his town agents, Messrs. Newton and Ensor, of Gray's Inn, with a person of the name of Bond, when he (Smith) observed that, as his business had so much increased, he should like to be a Master Extraordinary in Chancery, and a clerk was accordingly sent out to ascertain the expense, which was found to amount to between 8*l.* and 9*l.*; that he paid that sum to a clerk, with instructions to his agents to procure his appointment, which it was promised should be done in the course of three or four days; that, being at the time a Commissioner in the Courts of Common Law, to which he had been appointed by the mere payment of the fees, he was always under the impression that his appointment of Master Extraordinary in Chancery had been obtained in the same way: and that, although he could find no trace of the entry of the 8*l.* 10*s.* in his own books or in those of his agents, which he accounted for by not having at that time kept any regular account-book himself, and having frequently paid sums of money to his agents when in town, which were not entered in the business account, he could swear that he paid the amount to a clerk, who died before the 1st of last January.

"The Lord Chancellor—What evidence is there that the person is dead, by saying that he died before a certain day?

"Sir W. Wood continued—The next affidavit was that of a person of the name of Salmon, a general merchant at Birmingham, who stated, that about 11 years ago he heard Smith say that he had applied, when last in London, to be appointed a Master Extraordinary, and that he afterwards acted as such, although a short time before he had refused to administer an oath on the ground that he was not a Master. Mr. Noble, a solicitor of 20 years' standing at Henley-in-Arden, deposed, that on the 15th of April last he was with Smith and Jackson, who was then Smith's agent, but had since died, and heard a conversation between them, in which Jackson said to Smith, 'It's all right; I recollect your application;' and Smith replied that he had paid the 8*l.* 10*s.* to his agents. Jackson then said to Smith that he had better go to Birmingham and look through his papers to see whether he had anything relating to the matter. In consequence of this, Smith started for Birmingham that very evening, and was not in Court on the next day, when he was struck off the rolls, or he would have asked for a postponement of the case. Counsel then urged that it could not have been from any corrupt motive that Smith had acted as a Master Extraordinary, as it had not been 1*l.* profit to him, and then stated that a document had been signed by 31 solicitors of Birmingham, including the mayor and clerk of the peace, to the effect that they believed Smith would not have acted as a Master Extraordinary unless he had been under the impression that he was one. In conclusion, it was urged that he had already suffered punish-



ment enough for the wrongful attestation of the affidavit, by having had his business, since April last, reduced from 2,000*l.* a year to almost nothing, and having been six weeks imprisoned through being unjustly sued on the same account.

"The Lord Chancellor, after having gone through the facts of the case, said that the assumption of the office of Master Extraordinary in Chancery was a very grave offence, as conferring considerable importance where it was not due, and leading the public to suppose that the person holding the sign manual of the Crown had reposed great confidence in that person. In consequence of the present case, he had taken some trouble to ascertain the state of the roll of Masters Extraordinary, and found that it consisted of 4,430 names. He had caused circulars to be sent to each of these persons with a view of finding out who were acting, but at present he had only received 2,486 answers, so that an accurate list could not yet be made out. If he (the Lord Chancellor) could be fully satisfied that Mr. Smith had acted in the office under the impression that he had been duly appointed, he should have great pleasure in acceding to the prayer of the petition, the more so in considering the early time of life of the petitioner. The affidavits, however, did not satisfy him on that head, and in addition to the want of all trace of the payment of the 8*l.* 10*s.*, either in Mr. Smith's books or in those of his agents, one most material point had been entirely overlooked, — namely, that no person was ever appointed a Master Extraordinary in Chancery without a certificate of his respectability from the neighbours of the applicant. That such a searching inquiry into character was requisite, was fully exemplified by the present case, and, therefore, in the absence of any explanation on this point, it must be taken that Mr. Smith knew all along that he was not a Master Extraordinary. The fact of his having acted for 10 years did not do away with the difficulty of the certificate, as it did not at all follow that he could at that short period after entering business have obtained the requisite certificate. Moreover, the Court had received no satisfactory evidence of the death of the clerk, who was represented to have received the money. In point of fact, all the persons who could have thrown any light upon the subject seemed to be dead, including Jackson, whose conduct, however, entirely contradicted the statement that had been made that day. It had been represented that Jackson advised Smith to go down to Birmingham to search his papers for an explanation, and yet on the following day, instead of asking for a postponement of the case, which he (the Lord Chancellor) would most readily have granted, he (Jackson) instructed counsel that no adjournment was required. Did this look as if he expected any evidence would turn up to prove that Smith might have supposed that he had been appointed a Master Extraordinary? Certainly not; and, therefore, with every disposition on behalf of the Court to deal leniently with the

case, it could come to no other conclusion than that Smith had knowingly usurped the office of Master Extraordinary, without any authority even to excuse it. Although he (the Lord Chancellor) was unwilling to destroy all the future prospects of Mr. Smith, he should mark his sense of the offence by ordering him to repay all the expense incurred by his having improperly exercised the office, and, upon that being done, he might at the expiration of six months from the present day, be restored to the Roll of Solicitors."

## NEW ORDER IN CHANCERY.

### DEPOSITS ON APPEALS.

10th December, 1852.

In the matter of the Suitors of the High Court of Chancery.

In pursuance of an Act of Parliament passed in the 16th Vict., intitled, "An Act for the relief of the Suitors of the High Court of Chancery," the Lord Chancellor doth order, that the balance of cash in the hands of the Registrars of the said Court, or any of them, arising from deposits on appeals, re-hearings, and exceptions, which deposits were made previously to the passing of the said Act, be ascertained, and the amount to be verified by affidavit, be, pursuant to the said Act, paid into the Bank to the credit of the Accountant-General of the said Court, to the account to be entitled, "The Appeal Deposit Account." And his lordship doth further order, that the senior Registrar for the time being do set down the deposits received by him under the said Act in a book to be kept by him for that purpose, together with a memorandum of the name of the cause or matter on which each deposit is made, and of the party making the same, and of his solicitor. And in any case where the said Court has heretofore by any order directed, or shall hereafter direct, any such deposit, or portion of deposit, to be paid, the same shall be paid by the Accountant-General of the said Court out of any sum of cash which at the time of such payment may be in the Bank to his credit the account entitled, "The Appeal Deposit Account," to the party or parties to whom such deposit or portion of deposit is ordered to be paid, or to his or their solicitor to be named in such order, whose receipt in such latter case shall be sufficient discharge for the same. And, for the purpose of such payments, the Accountant-General is from time to time to draw on the Bank according to the form prescribed by the Act of Parliament and the General Rules and Orders of this Court in that case made and provided, without such direction being contained in each particular order.

## NOTES OF THE WEEK.

### CHANCERY OFFICE COPIES.

We understand that arrangements will be made for the supply of stamps at the Record

and Writ office, so that office copies of answers, affidavits, &c., may be bespoke by the solicitor and paid for when the copy is taken away, in accordance with the former practice. It may be discretionary with the officer in certain cases to require a deposit.

The adhesive stamps are now ready for use, and may be affixed in lieu of sending purposely to the Stamp Office when the filing stamp of 2s. 6d. has not been placed on the affidavit, or the stamp of 1s. 6d. for each deponent.

#### FORMS OF PROCEEDING BEFORE THE EQUITY JUDGES.

Forms have been printed and may be obtained of the law stationers for the several proceedings in the Chambers of the Equity Judges. The following is a list of the forms:—

1. Administration summons.
2. Judges' summons originating proceedings.
3. Summons for the production of documents.
4. Chief clerks' summons.
5. Order to amend bill or claim.

6. Order for time.
7. Order for time, with costs.
8. Order to answer interrogatories.
9. Order to answer interrogatories, with costs.
10. Order to enlarge publication.
11. Orders for time for closing evidence.
12. Advertisement.

#### LORD DENMAN'S BUST AND LORD TRURO'S PORTRAIT.

THE Bust of Lord Denman, which has been executed by Mr. Christopher Moore, the Sculptor, has been placed at the upper end of the Hall of the Incorporated Law Society. It was presented to the Society at the expense of several of its members, who were desirous of thus marking their respect for the distinguished character of the late Chief Justice. The likeness is very striking, and the work reflects great credit on the sculptor.

We believe that the List of Subscribers is not finally closed. Members may inscribe their names in the Secretary's Office.

The admirable Portrait of Lord Truro, by Mr. Pickersgill, also adorns the Hall.

#### RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

##### Lord Chancellor.

Dec. 3.—*In re Ipswich Charities*—Arrangement as to filling up vacancies in trustees.

— 8.—*Talbot v. Lord Dormer*—Hearing as to appointment of guardian to infant taken in private.

— 8.—*Cox v. Dome*—Order for transfer from paper of Master of the Rolls.

— 8.—*In re Tharp*—Order on petition for payment of arrears of annuity.

— 8.—*Stump v. Gaby*—Order for rehearing.

— 11.—*Stump v. Gaby*—Appeal dismissed.

##### Lords Justices.

*Jones v. Batten.* Dec. 8, 1852.

SUITORS IN CHANCERY RELIEF ACT. — STAMP ON PRINTED BILL, WHERE WRITTEN COPY DULY STAMPED.

Held, that where a written copy bill has been filed, under s. 6 of the 15 & 16 Vict. c. 86, the printed copy presented within the 14 days, pursuant to the undertaking, must be filed without a fresh stamp, and that it is not liable to be stamped under the 15 & 16 Vict. c. 87, s. 12.

In this case a written copy bill had been filed, under the 15 & 16 Vict. c. 86, s. 6 (printed post, p. 114), and which was duly stamped with a 1l. stamp, and on the solicitor tendering the printed copy, pursuant to his undertaking, to Mr. Berrey, the Record and Writs' Clerk, it was rejected, on the ground it required a 1l. stamp, under s. 12 of the 15 & 16 Vict. c. 87, which enacts, that "no document which by any order or orders to be respectively made as aforesaid shall be required to have a stamp im-

pressed thereon or affixed thereto, shall be received, or filed, or be used in relation to any proceeding in the Court of Chancery, or be of any validity for any purpose whatsoever, unless or until the same shall have a stamp impressed thereon or affixed thereto, in the manner directed by such order."

*Freeing* in support, referred to *Lambert v. Lomas*, decided by Vice-Chancellor Turner (reported p. 114, post).

The Lords Justices said, that the stamp on the written bill was sufficient, and that the printed copy, having been presented within the 14 days, must be filed without any additional stamp.

Dec. 8.—*In re Vines and another*—Order for delivery and taxation of bills of costs.

— 8, 9, 10.—*Shrewsbury and Birmingham Railway Company v. Birmingham, Wolverhampton and Stour Valley Railway Company and others*—*Cur. ad. vult.*

— 9.—*Egremont v. Egremont*—Order for appointment of guardian *ad litem* to infant, without commission.

— 10.—*Tamlyn v. Reynolds*—*Cur. ad. vult.*

— 10.—*Ex parte Pemberton, in re Tyler*—Order of Commissioner discharged, without costs.

— 13.—*In re Richardson and others, ex parte Buckingham and Midland Banking Company*—Appeal from Commissioner dismissed, with costs.

— 13.—*Brenan v. Preston*—Order for appointment of receiver and manager.

— 11, 14.—*Clegg v. Fishwick*—Decision affirmed of the Master of the Rolls.

— 14.—*Lawton v. Swettenham*—Appeal dismissed from the Master of the Rolls.

**Master of the Rolls.****Stansfeld v. Hobson.** Nov. 6, 8, 13, 1852.**MORTGAGEE IN POSSESSION. — ACKNOWLEDGMENT.—STATUTE OF LIMITATIONS. —REDEMPTION.**

*A mortgagee in possession of an estate wrote a letter to the mortgagor, pending negotiations for paying off the mortgage:—"I do not see the use of meeting you either here or at M., unless some one is ready with the money to pay me." Held, a sufficient acknowledgment to take the case out of the Statute of Limitations, and a decree was therefore made for a redemption, with a reference as to lasting improvements.*

THIS was a claim to redeem certain estates which had been mortgaged in 1824, and which had been in the possession of the mortgagee for more than 20 years. It appeared that by a letter to the mortgagor, dated in February, 1833, when negotiations were pending to pay off the incumbrance, the former said:—"I do not see the use of meeting you either here or at Manchester, unless some one is ready with the money to pay me off." The question was, whether this was a sufficient acknowledgment to take the case out of the 3 & 4 W. 4, c. 27.

*Elmsley and Osborne for the plaintiff; Palmer and Humphrey for the defendant.*

*Cur. ad. vult.*

The *Master of the Rolls* said, that the letter was a sufficient acknowledgment, under the authority of *Trulock v. Robey*, 12 Sim. 402, and that the plaintiff was entitled to a decree to redeem, with a reference as to lasting improvements.

**Bunbury v. Bunbury.** Nov. 13, 1852.**COMMISSION TO EXAMINE MARRIED WOMAN.—EVIDENCE AS TO VALIDITY OF MARRIAGE AND OF SETTLEMENT.**

*A suit to set aside a disposition by the testator had been compromised, and a commission was sought to examine in Canada, apart from her husband, a party interested, who had married while an infant. The Court directed evidence to be adduced at Chambers of the validity of the marriage, and that a proper settlement had been made, and if not, for the husband to submit proposals for the same.*

IN this suit, which was instituted to set aside a disposition by the testator, Mr. Bunbury, a compromise had been come to, and a reference was directed to inquire whether it was beneficial to the children. The *Master* reported, with certain alterations, that it was beneficial, but one of the children interested had married while an infant, and it was now sought to obtain a commission for her examination in Canada, apart from her husband.

*Hallett in support.*

The *Master of the Rolls* said, evidence must be produced at Chambers that a proper and valid marriage had taken place and a settlement been duly made, and if not, for the husband to submit proposals for one.

Dec. 8. — *In re British and Foreign Gas*

*Company, ex parte Hills.*—Motion dismissed, with costs, to remove name from list of contributors.

Dec. 8.—*Parker v. Bigg*—Order as to costs.  
— 9.—*Frail v. Ellis and others*—Plaintiff held entitled to lien to extent of unpaid purchase-money.

— 10.—*Lawton v. Campion*—Demurrer to bill overruled.

— 11.—*Smyth v. Upton*—Order for appointment of receiver, and for allowance for maintenance and education of infant.

— 11.—*Southern v. Wollaston*—Judgment in favour of validity of bequest.

— 11.—*Swinborn v. Nelson*—*Cur. ad. vult.*

— 13.—*Lady Sparrow v. Hilton*—Judgment on exceptions to *Master's* report.

— 14.—*Crewer v. Costerton*—Part heard.

— 14.—*Eaton v. Hazel*—Decree for account and for appointment of new trustees.

**Vice-Chancellor Turner.****Lambert v. Lomas.** Nov. 13, 1852.**IMPROVEMENT OF JURISDICTION OF EQUITY ACT.—FILING INTERROGATORIES WHERE WRITTEN BILL.**

*Leave given to file interrogatories for the defendant's examination, where the written copy of the injunction bill had only been filed, and before the printed copy had been filed.*

THIS was an application for an order to file the interrogatories in this case, before the printed bill had been filed,—a written copy having been filed under the 15 & 16 Vict. c. 86, s. 6, which enacts, that "the clerks of records and writs of the said Court may receive and file a written copy of any bill of complaint praying a writ of injunction or a writ of *ne exeat regno*, or filed for the purpose either solely or among other things of making an infant a ward of the said Court, upon the personal undertaking of the plaintiff or his solicitor to file a printed copy of such bill within 14 days, and every bill of complaint so filed shall be deemed and taken to have been filed at the time of filing the written copy thereof."

By the 16th Order of August 7 last, "in cases in which the plaintiff requires an answer to any bill from any defendant or defendants thereto, the interrogatories for the examination of such defendant or defendants are to be filed within eight days after the time limited for the appearance of such defendant or defendants;" and the 17th Order directs, that "if the defendant appear in person, or by his own solicitor, within the time limited for that purpose by the rules of Court, the plaintiff is, within eight days after the time allowed for such appearance, to deliver to the defendant or defendants so required to answer, or to his or their solicitor or solicitors, a copy of the interrogatories so filed as aforesaid, or such of them as the particular defendant or defendants shall be required to answer."

*Amphlett in support.*

The *Vice-Chancellor* said, the interrogatories might be received, and made an order accordingly.

*Lambert v. Lomas.* Nov. 19, 1852.

SUITORS' IN CHANCERY RELIEF ACT.—  
STAMPS ON PRINTED COPY BILL WHERE  
WRITTEN COPY FILED WITH STAMP.

*Order on Record and Writs' Clerk to receive  
and file printed copy bill pursuant to under-  
taking, without additional stamp of 1l.  
thereon—the written copy filed under the  
15 & 16 Vict. c. 86, s. 6, having been duly  
stamped.*

THIS was a motion in this injunction case  
for an order on Mr. Murray, the Record and  
Writs' Clerk, to file a printed copy of the bill  
without a second stamp of 1l. being affixed—  
the stamp having been duly paid on the written  
copy.

*Amphlett* in support, referred to the 15 & 16  
Vict. c. 87, s. 12 (printed p. 113, *ante*), and the  
6th General Order of Oct. 25 last.

The Vice-Chancellor, after consulting the  
other judges, made the order as asked.

Dec. 8. — *Duffield v. Denny* — Inquiry dis-  
creted as to evidence.

— 8. — *Van Sandau v. Gurney* — Order for  
production of documents admitted by defend-  
ants to be in their possession.

— 8. — *Smith v. Hurlbutt* — Order for leave  
to enter memorandum of service of copy bill  
on defendant, and special order for two weeks'  
further time.

— 7, 9. — *Cowman v. Harrison* — *Cur. ad.  
vult.*

— 9, 10. — *Bridges v. Ramsey* — Part heard.

— 10. — *Fitzwilliam v. Kelly* — Judgment on  
special case as to construction of will.

— 13. — *Abbott v. Calton* — Stand over for  
production of further evidence at Chambers.

— 11, 14. — *Hay v. Willoughby* — Declara-  
tion that intestate's estate was liable by specialty  
in respect of five shares in banking company.

Vice-Chancellor Kinderley.

*Groves v. Lane.* Nov. 13, 1852.

EQUITY JURISDICTION IMPROVEMENT ACT.  
— APPOINTMENT OF PERSON TO REPRESENT  
ESTATE OF DECEASED PARTY. —  
GENERAL ADMINISTRATION.

*Held, that the order under sect. 44, of the 15  
& 16 Vict. c. 86, for the appointment of  
some person to represent the estate of any  
deceased party interested in the matters in  
question, only refers to parties indirectly  
interested in the suit and not to an intestate  
debtor to administer whose estate the suit  
was actually instituted; and held also, that  
a general administration and not an admin-  
istration ad litem to his estate must be  
taken out.*

IN this creditor's suit for the administration  
of the estate of an intestate debtor, it appeared  
that no administration had been taken out, and  
an order was sought under the 15 & 16 Vict.  
c. 86, s. 44, (printed *ante*, p. 37 note), to ap-

point some person to represent the estate for  
all the purposes of the suit.

The Vice-Chancellor said, the section re-  
ferred only to some persons indirectly interested  
in the suit, and not to the person to administer  
whose estate it was actually instituted, and  
that an administration *ad litem* was insufficient,  
and a general administration must be taken  
out.

Dec. 8. — *White v. Cohen* — Injunction  
granted to restrain carrying on a noisy trade.

— 9. — *Mayor, &c., of Basingstoke v. Lord  
Bolton* — Demurrer to bill allowed, without  
costs, with leave to amend.

— 9, 10, 11, 13, 14. — *Murray v. Bogue* —  
*Cur. ad. vult.*

Vice-Chancellor Stuart.

*M'Intosh v. Great Western Railway Company.*  
Nov. 11, 1852.

IMPROVEMENT OF JURISDICTION OF EQUITY  
ACT.—PRODUCTION OF DOCUMENTS.

*Order made for production of certain docu-  
ments under the 15 & 16 Vict. c. 86, s. 20,  
upon the affidavit of the defendant's solicitor  
of his belief that the plaintiff had those  
documents in his possession—excepting  
such as were privileged, and with liberty  
to the plaintiff to seal up, on oath, such  
parts as were privileged.*

THIS was a motion under the 15 & 16 Vict.  
c. 86, s. 20, (printed *ante*, p. 19, note,) on be-  
half of the defendants, who had put in a suffi-  
cient answer, for the production by the plain-  
tiff on oath of certain documents in his pos-  
session.

*Bacon and Stevens* in support, on an affida-  
vit by the defendant's agent of his belief that  
the plaintiff had these documents in his pos-  
session.

*Russell and Bazalgette* for the plaintiff,  
contrà, on the ground that, although he had  
some of the documents, their production would  
occupy much time and create great unneces-  
sary expense, and citing *Fiott v. Mullins*,  
*ante*, p. 19.

The Vice-Chancellor said, that in the case  
cited the motion was entirely unsupported by  
evidence; and an order was therefore made for  
production, except of such documents as were  
privileged to be specified by affidavit, and with  
liberty to seal up, on oath, such parts as were  
privileged.

*M'Intosh v. Great Western Railway Company.*  
Nov. 11, 1852.

JURISDICTION OF EQUITY IMPROVEMENT  
ACT—ORDER TO TAKE EVIDENCE UNDER  
NEW PRACTICE.

*Order made, on defendants' application, for  
the evidence to be taken under the 15 & 16  
Vict. c. 86, and the 39th Order of August  
7, in a suit relating to mutual accounts,  
although the issue was joined in May last,  
and one of the witnesses had been examined  
de bene esse, under the old practice.*

THIS was a motion on behalf of the defendants, for the evidence in this suit to be taken under the 15 & 16 Vict. c. 86, and the 39th Order of Aug. 7. It appeared issue was joined on May 18 last, and one of the witnesses had been examined *de bene esse*.

Bacon and T. Stevens in support; Russell and Bazalgette contra.

The Vice-Chancellor said, that the present case, which related to mutual accounts, was peculiarly within the view of the legislature in framing the statute, and made the order as asked accordingly.

Dec. 8.—*Great Northern Railway Company v. Lancashire and Yorkshire Railway Company*—Injunction granted.

—8.—*In re Midland Union, Burton-upon-Trent, Ashby-de-la-Zouch, and Leicester Railway Company, ex parte Pearson's Executors*—Motion refused, with costs, to remove names from list of contributories.

—9.—*Grote v. Byng*—Application to appoint receiver to be made in Court, but at Chambers where in place of a former receiver.

—9, 10.—*Rawlins v. Daglish*—Claim dismissed, without costs.

—11, 13.—*Morgan v. Holford*—*Cur. ad. vult.*

—13.—*Attorney-General v. Attwood*—Stand over.

—14.—*Colombine v. Penhall; Penhall v. Colombine*—Part heard.

### Court of Queen's Bench.

*Kipling v. Ingram.* Nov. 9, 1852.

**LOCAL PAVING ACTS.—RATE ON OCCUPIER OF PREMISES ABUTTING ROAD REPAIRED BY TRUSTEES OUT OF TOLLS.**

*Under the Local Paving Act for St. Luke's, Middlesex, (2 Wm. 4, c. xiii.) rates were imposed on the occupiers of tenements abutting on streets paved, &c., under the former act, 50 Geo. 3, c. cxlix. A rate made on the occupiers of a house abutting on the City Road, which was kept in repair by the tolls taken thereon, was held bad.*

THIS was a special case. It appeared that the defendant occupied certain premises adjoining the City Road, which was kept in repair by trustees out of the tolls taken thereon, and that he had been rated by the paving commissioners of St. Luke's, under the 2 Wm. 4, c. xiii. s. 6, amending the 50 Geo. 3, c. cxlix.

*Crowder, Q. C., and G. Denman* for the commissioners; *Watson, Q. C., Lush, and Hawkins*, for the defendant.

The Court said, that the presumption was in the first place against the rate, inasmuch as there was no equivalent given, and it also appeared that the second act only imposed rates on the occupiers of tenements abutting on streets, paved, &c., under the 50 Geo. 3, c. cxlix., whereas the City Road was paved by trustees of the turnpike road, and the defendant was therefore entitled to judgment.

### Common Pleas.

*Hamilton, appellant; Bass, respondent.* Nov. 12, 1852.

**FREEHOLDERS' CLAIM TO VOTE.—HOW YEARLY VALUE OF QUALIFICATION TO BE COMPUTED.**

Held, that, in computing the annual value of premises as a qualification to vote, the amount of landlord's repairs must be deducted from the rent under the 8 Hen. 6, c. 7. The decision of the revising barrister was therefore affirmed, with costs, disallowing the claim of 30 persons as 40s. freeholders, where their qualification consisted of premises of the yearly value of 63l., but on which the annual expenditure was 4l.

In this appeal from the decision of the revising barrister for the eastern division of Cumberland, it appeared that certain premises of the yearly value of 63l. were held in fee by 30 persons, but that the average expenditure in repairs amounted to 4l. a year. The claim of the owners to vote as 40s. freeholders having been rejected, this appeal was presented.

*Mellor, Q. C.,* in support, referred to 8 Hen. 6, c. 7; 10 Hen 6, c. 2; 19 Geo. 2, c. 28, s. 5; and *King v. Birmingham, Burr. Sees. Cas. 748; Colville v. Wood, 1 Lutw. Reg. Cas. 483.*

*S. Temple, contra,* cited *Copland v. Bartlett, 6 C. B. 18; 2 Lutw. Reg. Cas. 102; Beamish v. Overseers of Stoke, 2 Lutw. Reg. Cas. 89; Lee v. Hutchinson, 8 C. B. 16.*

The Court said, the question was, what were the premises worth, and as it appeared a tenant would only give 59l. if he had to repair, the qualification was insufficient, and the appeal must therefore be dismissed, with costs.

*Collins, appellant; Thomas, Town Clerk of Tewkesbury, respondent.* Nov. 12, 1852.

**REFORM ACT.—QUALIFICATION OF VOTER.—COTTAGE AND GARDEN NOT ADJACENT THERETO.**

Held, affirming the decision of the revising barrister, that the occupation of a cottage and garden was not sufficient qualification under the 2 Wm. 4, c. 45, s. 27, where the cottage alone was of insufficient value, and the garden was at a distance therefrom of about 60 yards, although rented at one time and of the same landlord.

THIS was an appeal from the decision of the revising barrister, on behalf of a claimant to vote in respect of a cottage and garden. The cottage alone was of insufficient value to qualify, and the garden was about 60 yards therefrom, but they were both rented at one time and of the same landlord.

*Ker* contended the occupation was sufficient, referring to the 2 Wm. 4, c. 45, s. 27.

The Court affirmed the decision of the revising barrister, disallowing the claim.

### Exchequer Chamber.

*Wesson v. Allicard.* Nov. 30, 1852.

**BILL OF EXCHANGE.—INDORSEE AGAINST ACCEPTOR.—PLEA OF BANKRUPTCY AND NOTICE TO DRAWER.—DEMURRER.**

Held, affirming the decision of the Court of Exchequer, that the indorsee of a bill of exchange was not barred of his debt by a plea of the bankruptcy of the acceptor where he had not received notice of the first sitting under the 12 & 13 Vict. c. 106, although notice had been given to the drawer.

THIS was an appeal from the Court of Exchequer, allowing a demurrer to the plea, to this action by the indorsee against the acceptor of a bill of exchange, setting out that he was a trader, and had presented a petition to the Bankruptcy Court under the 12 & 13 Vict. c. 106, and that the Court had appointed a sitting,

of which 14 days' notice had been given to all the creditors, including the drawer of the bill of exchange sued on, and stating that he did not know the bill had been indorsed to the plaintiff, or that he was the holder thereof.

*Watson and Pearson* in support; *Hugh Hill and Hawkins*, contra.

The Court said, that the plaintiff was not barred of his remedy, because he had received no notice of the first sitting appointed by the Bankruptcy Court, as required by the 12 & 13 Vict. c. 106, and affirmed the judgment of the Court below accordingly.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

### House of Lords.

#### APPEAL.

1. *Competency.—Pleading.—Dilatory defence.*—A plea which does not merely raise an objection to a particular form of proceeding, leaving it to the plaintiff to proceed in a different form at another time, but which, if allowed, entirely bars the plaintiff from his remedy, is a peremptory, and not a dilatory, plea, within the 6 Geo. 4, c. 120, s. 5, and a decree thereon may be subject of appeal to this House. *Geils v. Geils*, 3 H. of L. 280.

2. *Petition to dismiss for incompetency.—Right to begin.—Costs.*—Where a petition to dismiss an appeal for incompetency has been directed by the Appeal Committee to be argued at the bar of the House, the counsel for the petitioner is entitled to begin.

The petition was dismissed, but the costs were reserved. *Geils v. Geils*, 3 H. of L. 280.

3. *Questions of law to the Judges.*—This House is at liberty, without regard to the form of an appeal, or the points raised upon it, to put questions of law to the Judges. *Bright v. Hutton*, 3 H. of L. 341; *Hutton v. Bright*, ib.

4. *Regularity of.—Right to begin.*—When it is ordered that counsel be heard on a question as to the regularity of an appeal, the party objecting has the right to begin. *Geils v. Geils*, 1 Macq. 37.

Cases cited: *Gray v. Forbes*, 5 Cl. & F. 363; *M'L. & Rob.* 343; *Bald v. Kerr, Shaw & M'L.* 47.

5. *Petition against receiving.*—Case in which before the appeal was received a petition was presented by the party in possession of the judgment of the Court below, praying that such appeal should not be received, inasmuch as the interlocutor was one repelling a preliminary or dilatory defence without leave obtained to appeal. Report by the Appeal Committee that the appeal ought to be received, and order made by the House accordingly. *Warrender v. Warrender*, 1 Macq. 43.

6. *Withdrawal of material parts of prayer at hearing.*—The House will not, at the hearing, allow an appellant to withdraw the material

parts of his prayer, and retain something insignificant merely to save his appeal from dismissal. *Anstruther v. East of Fife Railway Company*, 1 Macq. 98.

#### BANK.

*Agreement of surety for conduct of clerk.—Discharge by fresh arrangement.*—A. became surety for B.'s conduct as a clerk in a bank. B. was subsequently appointed to a better situation in a branch of the same bank, and A. extended his suretyship to this new situation. B. afterwards, while remaining in the same situation, undertook, on having his salary raised, to become liable to one-fourth of the losses on discounts. No communication of this new arrangement was made to A. B. allowed a customer considerably to overdraw his accounts, and thereby the bank lost a sum of money: Held, that the surety could not be called on to make good this loss, though it fell within the terms of the original agreement, as the fresh arrangement was the substitution of a new agreement for the former one, and A. was thereby discharged. *Bonar v. Macdonald*, 3 H. of L. 226.

#### BURGH CUSTOMS.

*Bridge customs.—Exaction of tolls from railway companies.*—Certain royal grants authorised the Magistrates of Linlithgow to levy certain tolls and customs. These held to demandable from the Railway Company. On appeal, the cause ordered to be remitted, with directions for a "hearing in presence," and with liberty to open up the record, and to amend the pleadings. Opinions of the 13 Scotch Judges upon the question, how far, and in what sense, immemorial usage is to be taken as explanatory of a charter from the Crown; and how far, and in what sense, a consideration is necessary to render such charter effectual.

Position of the record consequent on the remit. *Edinburgh and Glasgow Railway Company v. Magistrates of Linlithgow*, 1 Macq. 1.

Cases cited: *The Fleisher's case*, Morr. 10, 886; *Brett v. Beales*, 1 Moo. & M. 416; 10 Barn. & Cr. 508; *Duke of Hamilton's case*, 7 Bell, 1

## CALLS.

*Action notwithstanding forfeiture and cancellation of shares.*—Notwithstanding the forfeiture and cancellation of shares, and the issuing of new ones, the right to recover, in an action for calls, held to remain unimpaired in the company. *Inglis v. Great Northern Railway Company*, 1 Macq. 112.

Cases cited: *East Lancashire Railway Company v. Croxton*, 5 Exch. 287; *Belfast, &c., Railway Company v. Strange*, 1 Exch. 739; *Great Northern Railway Company, v. Kennedy*, 4 Exch. 417.

## COMPANIES' CLAUSES CONSOLIDATION ACT.

*Register of shareholders.*—By the Companies' Clauses' Consolidation Act, the book containing the register of shareholders is required to be authenticated by the seal of the company; but this "book" may consist of a series of volumes, in which case it will be sufficient if the seal be affixed to the last; provided there be a reference to the preceding ones, so as to identify and connect them together. *Inglis v. Great Northern Railway Company*, 1 Macq. 112.

## COMPROMISE.

*Of doubtful rights.*—*Title paramount.*—Upon a compromise of doubtful rights, a third party cannot come in and claim the fruits of that compromise by a title paramount. *Lord Advocate for Scotland v. Hamilton*, 1 Macq. 46.

## CONSTRUCTION OF ANCIENT STATUTES.

*Several statutes on same subject.*—Ancient statutes are to be construed with reference to the state of things at the time of their passing.

It is a rule that several statutes on the same subject are to be read as one statute. *M'William v. Adams*, 1 Macq. 120.

## CONTRIBUTORIES.

*Who are?*—*Contract with creditor.*—Contributories are those only who have contracted, by themselves or agents, with a creditor, or who have agreed to indemnify or repay, in part or in all, those who have contracted with the creditor on their own account. *Bright v. Hutton*, 3 H. of L. 341; *Hutton v. Bright*, ib. See *Provisional Committee-man*.

## COSTS.

*Against the Crown.*—Refusal of the House to award costs against the Crown.

State of the authorities regarding the rule that the Crown neither pays nor receives costs. *Lord Advocate for Scotland v. Hamilton*, 1 Macq. 46.

And see *Divorce*, 1; *Exceptions*; *Will*, 1.

## COUNSEL.

*Where two respondents having separate interests.*—Where, in an appeal, there were two respondents, having distinct interests, the House allowed two counsel to be heard for each.

Proper course in such a case. *Parish of South Leith v. Allan*, 1 Macq. 93.

## CREDITORS.

*Legal mortgages and specialty creditors.*—*Covenant.*—*Trustees for Crown.*—C. & Co. were legal mortgages and specialty creditors for a sum of 30,000*l.* on Y.'s estate. Certain official persons acting as trustees for the Crown paid off this debt, and received an assignment of the mortgage, and of a covenant therein contained with liberty to sue upon it, in trust for the Crown.

Held, that the Crown was legal mortgage and specialty creditor for the 30,000*l.* originally due to C. & Co. *Attorney-General v. Cox*, 3 H. of L. 240; *Pearce v. Attorney-General*, ib.

## DEFENCE.

*Preliminary.*—A defence which extinguishes a demand, or puts an end to the cause of action, though it may be preliminary, is not dilatory, but peremptory. *Geils v. Geils*, 1 Macq. 36.

See *Appeal*, 1.

## DIVORCE.

1. *Costs.*—*Reversal of interlocutor, except as to costs.*—In a suit for a divorce *a mensâ et thoro*, the wife obtained judgment in the Court below, with costs. That judgment was reversed by the Lords, on the ground that the remedy sought was not the proper one; but the interlocutor was allowed to stand so far as it gave the wife the costs in the Court below.

The wife, however, was not allowed the costs of the appeal. *Paterson v. Paterson*, 3 H. of L. 308.

2. *A mensâ et thoro.*—*General principle.*—Neglect, silence, shunning the wife's company, and declarations by the husband that he will never cohabit with her, do not constitute that "cruelty and maltreatment," in respect of which the law will grant to the wife a divorce *a mensâ et thoro*.

Where, in a case of this sort, the Court of Session had pronounced for a divorce, the Lords reversed the interlocutor.

Actual personal violence, or the immediate menace of it, is not the only ground of maltreatment in respect of which such a divorce will be granted.

*Quære*, whether constant revilings and accusations of all sorts of crimes made, and falsely made, before friends and servants, would constitute a ground for such a divorce.

The general principle of the law as to divorce *a mensâ et thoro* is the same in England and Scotland.

But it seems that a special principle exists in the law of Scotland, which permits a divorce for a wilful desertion continued for four years. *Paterson v. Paterson*, 3 H. of L. 308.

Cases cited in the judgment: *Evans v. Evans*, 1 Hagg. Cons. Rep. 69; *Colquhoun v. Colquhoun*, Mor. Dict., vol. 15, app. Husb. & W. pt. 1, case 5, p. 10; *Duke of Gordon's case*, ib. vol. 14, case 112, p. 5902; *1 Fownf. 773*; *Latham v. Latham*, 2 Shaw & Dunal. 284; *Shand v. Shand*, 10 Shaw & D. 384.

3. *In Scotland after divorce in England.*—*Plea in bar.*—Upon a suit in Doctors' Commons by the husband against the wife, for restitution of conjugal rights, she puts in a responsive allegation charging him with adultery, and praying sentence of divorce *a mensâ et thoro*. Such sentence accordingly pronounced by the Court of Arches. She then institutes proceedings in the Court of Session in Scotland for a divorce *a vinculo*. Plea in bar, that she has already obtained redress. This plea repelled by the Court below, and leave to appeal not given. Appeal taken nevertheless. Objected to as incompetent, under the 6 Geo. 4, c. 120, s. 5. Right of appeal allowed. *Geils v. Geils*, 1 Macq. 36.

## EXCEPTIONS.

*Overruled.*—*Costs.*—This house, in overruling exceptions which had been allowed in the Court below, but which ought to have been overruled there, gave the costs in the Court below. *Attorney-General v. Cox*, 3 H. of L. 240; *Pearce v. Attorney-General*, *ib.*

## EXECUTOR.

*Residue.*—*Trust.*—A testator devised "all my estate, both real and personal to E. E., his executors, administrators, and assigns, to and for the several uses, intents, and purposes following, that is to say;" and then, after specifying various objects of his bounty, appointed "the said E. E. executor of this my last will and testament." The trusts of the will did not exhaust the estate.

*Held*, affirming a decree of Lord Chancellor Cottenham (2 Phill. 793; 15 Sim. 568), that E. E. did not become entitled, for his own benefit, to the personal estate undisposed of, but was a trustee thereof for the widow and next of kin of the testator, according to the Statute of Distributions. (*Dawson v. Clark*, 18 Ves. 247, commented on, and Lord Eldon's opinions adopted).

The rule in such a case is, that where there appears a "plain implication, or strong presumption," that the testator, by naming an executor, meant only to give the office of executor, and not the beneficial interest, the person named shall be considered a trustee for the next of kin of the undisposed surplus. *Elcock v. Mapp*, 3 H. of L. 492.

## HUSBAND AND WIFE.

*Plea of proceedings in Arches Court in bar of suit in Scotland for divorce a vinculo.*—A Scotchman was married in England to an Englishwoman, and then returned to Scotland, where he was domiciled. Some years afterwards, the wife quitted Scotland, and returned to England, where she lived separate from her husband. He came to England, and instituted proceedings in the Arches Court for a restitution of conjugal rights. The wife, in her responsive allegations, charged him with adultery, and on that charge prayed for a divorce *a mensâ et thoro*. Judgment was given in her favour. The husband returned to Scot-

land, where the wife instituted a suit for divorce *a vinculo*. The husband pleaded the proceedings in the Arches Court as a bar to further proceedings in Scotland.

*Held*, that this plea raised a peremptory or substantial defence, and that a judgment thereon might be made the subject of appeal to this House. *Geils v. Geils*, 3 H. of L. 280.

## INJUNCTION.

*Or interdict against railway company.*—*Obligation to complete.*—*Landowner.*—Affirmance of a refusal to grant an injunction or interdict in a case where it appeared that a judgment negating the right had been pronounced by the Court below, in an action of declarator brought after the refusal of the injunction.

*Quære*, whether a landowner, having property along the line of a railway, for the execution of which an act has been obtained, but in pursuance of which act nothing has been done, can compel performance of the work.

*Quære*, whether he can prevent the company from asking Parliament for an act of dissolution. *Anstruther v. East of Fife Railway Company*, 1 Macq. 98.

## JUDGE'S OPINION.

*Practice where one of the Judges differs in opinion.*—The Judges were required to answer a question put by the House. One of them differed from the rest. The opinions of the majority were stated by one of their number, and, in the statement, the principle on which the dissentient Judge formed his opinion was set forth to his satisfaction. The House did not require him to state his reasons at length. *Salmon v. Webb*, 3 H. of L. 510.

## JUDGMENT.

*Alteration of former.*—*Quære*, whether this House, like any other Court of Justice, may, in a subsequent case, overrule a previous decision of its own. *Bright v. Hutton*, 3 H. of L. 341; *Hutton v. Bright*, *ib.*

## JURY.

*Challenge of juryman.*—*Town councillor.*—*Irish Jury Act.*—A town councillor is, by the 3 & 4 Vict. c. 108, disqualified from being a special jurymen. The name of a town councillor stood on a special jury list after it had been reduced.

*Held*, that under the Irish Jury Act, 3 & 4 Wm. 4, c. 91, he was liable to challenge for this disqualification, when about to be sworn.

The right of challenge against a jurymen is a Common Law right, which cannot be taken away, except by the express terms of a Statute, and *quære*, whether it is taken away by the 3 & 4 Wm. 4, c. 91, except in cases where corporate bodies are parties, and kindred or affinity with a member of the corporate body is the ground of challenge.

It is not taken away by the effect of the 3 & 4 W. 4, c. 91, in respect of a disqualification created since that Statute.

Where a challenge in respect of such disqualification was made after reducing a special



jury, it was held not to be necessary to allege that the disqualification had arisen since the jury was reduced. *Barrett v. Long*, 3 H. of L. 396.

## LEASE.

*Personal covenant for payment of rent.—Surrender.*—*Specialty creditor for rent accrued before.*—Where a lease, containing a personal covenant for the payment of rent, is surrendered, the personal covenant is independent of the estate in the property, and, as to rent previously due, is not affected by the surrender, but the lessor remains a specialty creditor for the rent which accrued due before the surrender. *Attorney-General v. Cox*, 3 H. of L. 240; *Pearce v. Attorney-General*, ib.

## LIBEL.

1. *Innuendo.—Enlarging sense of words.—Rejection as repugnant and void.*—In an action for a libel in a Dublin newspaper, the first count, after the usual prefatory averments, proceeded thus:—"What possessed Lord H. (meaning thereby the said Lord Lieutenant of Ireland), if he knew anything about the country, or was not under the spell of vile and treacherous influence, to make his first visit, and that carefully puffed, to Long's, the coachmaker (meaning thereby the said plaintiff), the other day? If mere trade was his (meaning thereby the said Lord Lieutenant's) object, he had several respectable houses open to him (meaning thereby that the house and place of business of the said plaintiff was not respectable, and that the said visit was paid thereto for political objects)."

*Held*, that the innuendo did not enlarge the sense of these words, which were fully capable of the meaning given to them.

The third count repeated the same words, and accompanied them with the following innuendo:—" (meaning thereby, that the house of business of the said plaintiff was not a respectable house in the trade, and that the plaintiff himself was of such a character, that he would not be visited in the way of his trade and business, except from some political, or party, or other improper motive)."

*Held*, that the words were capable of the meaning thus attributed to them; but that if the innuendo was more extensive than the words, it might be rejected as repugnant and void, and that the words, being libellous, were actionable with its aid. *Barrett v. Long*, 3 H. of L. 395.

Cases cited in the judgment: *Corbet v. Hall*, Cro. Eliz. 609; *Smith v. Croker*, Cro. Car. 512; *Harvey v. French*, 1 Cr. & M. 11; *Williams v. Stott*, 1 Cr. & M. 675, 687.

2. *Malice.—Evidence of former publications.*—In an action of libel, the defendant pleaded the general issue, and also a plea under the 6 & 7 Vict. c. 96, denying actual malice, and stated an apology. On the trial, the plaintiff, in order to prove malice, tendered in evidence other publications of the defendant, going back above six years before the publication complained of.

*Held*, that these publications were admissible in evidence. *Barrett v. Long*, 3 H. of L. 395.

## MORTGAGE.

*Representation to intending purchaser.—Contract.*—A mortgagor represented to an intending purchaser that the estate was only liable to a mortgage for 20,000*l.* to G. & Co., an additional sum of 10,000*l.* being secured on the mortgagor's personal property. The whole sum had in fact been originally secured on the land, and G. & Co. denied that they had ever done anything to part from their security on the land. After the death of the mortgagor, G. & Co., filed a bill of foreclosure, and obtained from the purchaser the whole 30,000*l.*

*Held*, that as between the purchaser and the executors of the mortgagor, the representations made by the mortgagor to the intending purchaser, were equivalent to a contract with him, and the personal property of the mortgagor was liable to the extent of the 10,000*l.* *Attorney-General v. Cox*, 3 H. of L. 240; *Pearce v. Attorney-General*, ib.

## NEW TRIAL.

*New issue directed.*—Under the 6 Geo. 4, c. 120, s. 34, the Court, when ordering a new trial, has power to direct an issue, better calculated than the former one, to meet the justice of the case. *Inglis v. Great Northern Railway Company*, 1 Macq. 112.

## PEERAGE.

1. *Right of person not claiming to object to claim.—Order of precedence, disturbing.*—In peerage cases, objectors or contraditors may intervene, although they do not themselves claim the dignity in question.

They are not, however, let in as of course, but on grounds stated and established.

In judging of those grounds, the lords exercise a large discretion.

Disturbance of the order of precedence in the peerage has been repeatedly held a sufficient ground to admit an objector. *Montrose Dukedom, Earl of Craufurd v. Duke of Montrose*, 1 Macq. 57.

2. *Claim.—Petition for leave to intervene.—Right to begin.*—When the petition of a person claiming leave to intervene as an objector in a peerage claim is appointed for argument, the counsel for such person have the right to begin. *Montrose Dukedom, Earl of Craufurd v. Duke of Montrose*, 1 Macq. 57.

## PETITION OF RIGHT.

*Statute.*—A, a British subject, claimed to be entitled to compensation for certain losses suffered by him through confiscation of his property in the first French Revolution. The governments of England and France entered into conventions respecting compensation to be afforded to British subjects. The English government received all the money agreed upon between the two governments as the amount of compensation, and undertook to satisfy all the claimants. An Act of Parliament (59 Geo. 3, c. 31), was passed, declaring how claims were to be preferred and liquidated. A. presented

his claim to commissioners appointed under the Act, and adopted the modes of proceeding provided by it; his claim was rejected. After payment of the claims which were established to the satisfaction of the commissioners, a surplus remained, which, in accordance with one of the provisions of the Act, was paid over to the Lords of the Treasury. *A.* proceeded to make his claim afresh under a petition of right.

*Held*, that he had no remedy, except under the provisions of the Statute. *Baron de Bode v. Reginam*, 3 H. of L. 449.

#### POOR LAW.

*Rating*.—Under the late Scotch Poor Law Act (8 & 9 Vict. c. 83), owners and occupiers of land cannot be rated to the relief of the poor in more than one parish or combination; and all contrary statutes and usages are repealed. *Parish of South Leith v. Allan*, 1 Macq. 93.

And see *Scotch Clergy v. Scotch Poor Law*.

#### POOR-RATE.

1. *Validity*.—Where some of vestrymen *de facto* and not *de jure*.—A rate for the relief of the poor, which is lawfully made in other respects, is not rendered invalid by the circumstance that some of the vestrymen, who concurred in making it, were vestrymen *de facto*, and not *de jure*. *Scadding v. Lorient*, 3 H. of L. 418.

2. *Completed at adjournment of vestry*.—Notice not stating purpose of meeting.—Signature of books of assessment.—Where notice of the purpose of a vestry meeting has been duly given, and that meeting has begun but not completed a certain business, and the meeting is regularly adjourned, such business may lawfully be completed at the adjourned meeting, though the notice for summoning such adjourned meeting does not state the purpose for which it is summoned.

A vestry, duly assembled by notice for that purpose, on the 12th of August, resolved, "That a rate of 1s. in the pound be made, and the same is hereby made and laid, and is to be collected forthwith." This resolution was signed by the requisite number of vestrymen; but one of the persons so acting was not at that time a vestryman *de jure*. The parish was so large that the estimate of the assessments required by the 6 & 7 Wm. 4, c. 96 (*Parochial Assessments Act*), could not be prepared and signed at that vestry. It was resolved "that the vestrymen be summoned for the 4th of September, to elect a director of the poor in the place of," &c., and the vestry then adjourned to the 4th of September. A special meeting of the vestry was held on the 28th of August, when the minutes of the last meeting were read and confirmed, and other business was transacted. On the 4th of September there was a general meeting of the vestrymen, pursuant to adjournment from the 12th of August, when the minutes of the last vestry were read and confirmed, and the vestry was occupied with hearing applications from poor parishioners for relief from payment of the

poor-rate. This meeting adjourned to the 9th of September. On the 9th of September, another general meeting of the vestry was held, when the minutes of the last vestry were read and confirmed; the vestry was occupied as before, and adjourned to the 14th. On the 14th of September, the vestrymen again met, having received a summons; which, however, did not state the purpose of the intended meeting; and four volumes, arranged in continuous alphabetical order, like one book, were produced, containing the particulars of the assessment required by the 6 & 7 W. 4, c. 96, and the last of these books was duly signed, and the rate thus completed was allowed by the justices: *Held*, that the rate thus made was a valid rate.

In replevin for seizing the plaintiff's goods under a distress for this rate, an avowry alleged that a poor-rate had been made after the passing of a certain specified Local Act (59 Geo. 3, c. xxxix), and before the taking of the said goods, and whilst the property of the plaintiff was, and the plaintiff in respect thereof was liable to be rated, to wit, on the 12th August, 1839:

*Held*, that this was a good avowry, and was proved by the facts above stated. *Scadding v. Lorient*, 3 H. of L. 418.

#### PROMISSORY NOTE.

*Agreement to sue*.—*A.* made his promissory note payable on demand, with interest, in favour of *B.* and *C.*, the executors of *D.* *A.* was, with several other relatives, to be entitled to certain benefits, under *D.*'s will, upon the coming of age of the youngest legatee named in the will. By an agreement made between the legatees, the executors were authorised to lend the funds in their hands on personal security, and a part of these funds having been lent to *A.* (as well as to the other legatees), he gave the executors the note in question. By the agreement it was settled that the notes given to the executors should not be used on till the youngest legatee had arrived at the age mentioned in the will. The executors did not sign this agreement; but when it had been signed by the other parties, took it into their possession. The executors brought the action while the legatee in question was alive, and before he had obtained the specified age. *A.* pleaded the agreement as an answer to the action, averring that plaintiffs accepted and received the note on the terms and conditions of the agreement, and that the youngest legatee was still under age. At the trial the agreement was proved:

*Held*, that the plea was bad in substance, for that the agreement was collateral, and was not between the same parties as the note. *Sakmon v. Webb*, 3 H. of L. 510.

Case cited in the judgment: *Wetherell v. Langston*, 1 Exch. R. 634.

#### PROVISIONAL COMMITTEE-MAN.

*Acceptance of shares and deposit paid*.—Contributory.—*A.* was a member of the provisional committee of a projected railway company, which had been provisionally registered,

and the affairs of which were put under the authority of a managing committee. He accepted shares, and paid a deposit on them; but did no further act. The scheme was abandoned. *Held*, that on these facts, he was not liable to a creditor for business done under the orders of the managing committee towards completing the projected undertaking and converting the association into a regular company, and consequently he was not liable as a contributory under the Winding-up Acts. *Bright v. Hutton*, 3 H. of L. 341; *Hutton v. Bright*, *ib.*

## RAILWAY.

1. *Agreement.—Notice.*—*A.*, a landowner, through whose estate a part of a projected railway was to pass, became a party to a deed with the projectors of the railway, by which he covenanted to withdraw his opposition to their bill and to oppose a rival bill, and they covenanted to pay him a certain sum of money in case their bill should pass within six months from the date of the deed, or to pay him a different sum if the rival bill should pass within 18 months from the date of the deed. It was then provided, that, if the bill of these projectors should not be passed within six months from the date of the agreement, either party might put an end to the agreement by a notice. The deed then contained a covenant on the part of these projectors, by which they agreed, if the two companies should be amalgamated, to pay a certain sum within three months after such amalgamation. The deed was dated on the 16th of March, 1846. The two companies were amalgamated in June, 1846, but no bill ever passed at the instance of the projectors alone. In November, 1846, these projectors gave a notice to put an end to the agreement. *A.* declared in covenant against these projectors on that clause of the deed by which he was to receive a sum of money within three months after the amalgamation of the companies. The defendants pleaded, that their bill had never passed into a law, that at the end of six months they had given notice to put an end to the agreement, and that they had not taken the plaintiff's land.

*Held*, that this plea was no answer to the action. *Capper v. Earl of Lindsay*, 3 H. of L. 293.

2. *Adjourned meeting of finance committee.—Signature of minutes.*—Where a meeting of the company's finance committee was adjourned, *held* sufficient that the minutes of the adjourned meeting were signed. *Inglis v. Great Northern Railway Company*, 1 Macq. 112.

See *Burgh Customs; Calls; Companies' Clauses' Consolidation Act; Injunction; Winding-up Acts*, 1.

## RIVER.

*Compromise.—Rights of the Crown.*—The alveus or bed of a public navigable river is *inter regalia*.

But where the trustees of a public navigable river had agreed, by way of compromise, to

pay an adjacent landowner a sum of money in respect of certain soil, the right to which was in dispute, the Crown was not allowed to claim the money, although the soil in question had formerly been part of the alveus or bed of the river, and was, consequently, *inter regalia*.

Whether the Crown ought to seek compensation in such a case, *quere*.

But, even were this held affirmatively, the Crown should establish its right by a substantive independent proceeding, and not interfere with the compacts of private parties.

In general, a right cannot be raised out of a mere salvo or exception in an Act of Parliament. *Lord Advocate for Scotland v. Hamilton*, 1 Macq. 46.

## SCOTCH CLERGY.

*Poor-rate.—Manse and glebe.*—The clergy of Scotland are not liable to be assessed or rated for the relief of the poor in respect of their manse or glebes. *Gibson v. Forbes*, 1 Macq. 106.

Case cited in the judgment: *Cargill v. Tasker*, 19 Fac. Coll. 103.

## SCOTCH POOR LAW.

1. *Able-bodied persons.*—Able-bodied persons are absolutely excluded from relief under the Poor Law of Scotland. *Pollock v. Darling*, *Morr.* 10,591; *Fac. Coll.* 17th Jan., 1804, overruled. *McWilliam v. Adams*, 1 Macq. 120.

2. *Claim of children.*—Under the Poor Law of Scotland, a father—himself requiring no relief—is not entitled to claim relief on behalf of his children.

The Poor Law does not recognise children as distinct from their parents while they are all living in family together.

If relief were granted to a father simply "on behalf of his children," they would still remain under the parental power, which would exclude the control of the parish officer.

It is one of the tests of title to relief under the Poor Law, that those on whose behalf it interferes shall be entirely subject to its disposal. *Lindsay v. McTear*, 1 Macq. 155.

## SURETY.

*Variance in agreement.—Discharge.*—A variance in the agreement to which a surety has subscribed, which variance has been made without the surety's knowledge or consent, and which may prejudice him, or amount to the substitution of a new agreement for a former one, will discharge the surety, though the original agreement, notwithstanding such variance, may be that on which the liability is substantially incurred. *Bonar v. Macdonald*, 3 H. of L. 226.

Cases cited in the judgment: *Evans v. Whyte*, 5 Bing. 485; *Moo. & M.* 468; *Eyre v. Barthrop*, 5 Madd. 221; *Archer v. Hale*, 4 Bing. 464; *Whitcher v. Hall*, 5 B. & C. 269; *Dowl. & R.* 22.

See *Bank*.

## SURVIVORSHIP.

*Stamp or legacy duty.*—An instrument may pass property from the dead to the living, and

yet not be testamentary, or subject to legacy duty.

Upon a recital of mutual love and affection, five maiden sisters, by a written instrument, convey and assign "from them and their heirs, severally to and in favour of each other, and to the heirs and assignees of the last survivor," all property then belonging to them, and all property to which they should be entitled at their death; transferring the whole "from them severally, and from the predecessor and predecessors, to and in favour of themselves jointly, and the survivors and survivor of them;" with power of administration, and with an obligation to pay all debts of the sisters predeceasing: *Held* (reversing the judgment below), that this instrument was not testamentary; and that duty under the Stamp Laws was not demandable. *Brown v. Advocate-General*, 1 Macq. 79.

#### TITHES.

*London Tithes.—Railway.—Compensation.—Practice.—Costs.*—By the statute 37 Hen. 8, c. 12, the inhabitants of certain parishes in the city of London, therein mentioned, are to pay tithes at the rate of 2s. 9d. in the pound on their rent. By the 2 & 3 Vict. c. xcv (the Blackwall Railway Act), where houses in any of these parishes (of which St. Olave's, Hart-street, is one) shall be taken for the purposes of the railway after the occupiers shall have quit- ted their houses, and "until new houses or other buildings shall be erected, and occupied, of such annual rent or value, that the tithes of such new houses shall be equal to the tithes payable for the houses quitted, the tithes, or payments in lieu of tithes, payable in respect of the houses quitted (according to the last assess- ments thereof to the 25th March, 1839), or annual sums of money equal to the loss in tithes which the rectors may sustain by the taking down of such houses, shall be paid and payable to the said rectors," &c. The company removed a great many houses, and built two others, which were at once occupied:

*Held* (reversing a decree of Vice-Chancellor Wigram, 5 Hare, 605), that the object of the Act was only indemnity to the clergy; that therefore the clergy were entitled to receive only what they would have received if the railway company had never interfered with the premises; that the company was liable to pay in respect of houses removed (where no others had been built in their places) such sums as were actually paid to the rector, whether by agreement or otherwise, up to the 25th of March, 1839; that the amount before then agreed upon between the rector and the occu- pant, and paid by the occupant, constituted the "assessment" within the meaning of the Act, and that the amount of compensation must be measured thereby; and further, that, where new houses had been built and occupied, the company was entitled to be credited (in reduc- tion of its general liability to make compensa- tion under the Act) with the sums which had become payable in respect of such new houses,

and not merely with those which had been actually received therefrom.

A decree directing a reference to the Master to make certain calculations on bases laid down in that decree was made in 1847. The decree was not then appealed against; the in- quiry took place in the Master's office, and he made his report, which the defendants in the suit excepted to; these exceptions were over- ruled, and the report confirmed; but no costs were given on either side. After these proceed- ings had taken place, the defendants appealed to this House against the decree itself. The de- cree was reversed, and the cause remitted, with directions; but no order was made as to the costs incurred in the Court below between the date of the decree and of the appeal, the Court below being left to deal with them as it might think fit. *London and Blackwall Railway Company v. Letts*, 3 H. of L. 470.

#### TRUSTEES.

*Not acting.—Discretion exercised by Court.*—Where trustees are directed to pay a certain sum to a person for life, and are empowered according to their discretion to invest the trust funds out of which that sum is to arise, but decline or neglect to act, and the assistance of a Court of Equity is sought in order to carry into effect the purposes of the will, the Court will not, as a matter of course, exercise that discretion, but will only act on its established and known rules, unless the intention of the testator plainly appears to exclude such a mode of proceeding. *Prendergast v. Prendergast*, 3 H. of L. 195.

Cases cited in the judgment: *Collins v. Collins*, 2 Myl. & K. 703; *Alcock v. Soper*, 2 Myl. & K. 699; *Pickering v. Pickering*, 4 Myl. & C. 289; *Howe v. Earl of Dartmouth*, 7 Ves. 137.

And see *Will*.

#### VENDOR AND PURCHASER.

*Liability of purchaser as to application of purchase-money.*—It is not a rule of Equity that, upon the purchase of property, subject to incumbrances, for its full value, the vendor is bound to apply the purchase-money in pay- ment of the incumbrances according to their priorities. Such a duty can only be the result of express agreement, or of a contract to be implied from the circumstances of the case. *Attorney-General v. Cox*, 3 H. of L. 240; *Pearce v. Attorney-General*, ib.

#### WAY.

*Right of public way.—Glen Tilt.*—An aver- ment by parties residing near a road, that they and "others of the public," have constantly used it, and paid for its repair, is sufficient, in point of pleading, to support an action to have that road declared public.

The case of a road dedicated to the public is not a case of servitude.

An action of declarator is, by the Law of Scotland, the proper mode of establishing the right to a public way.

*Semble*, that such action may be maintained

by any private party on behalf of the public; there being in Scotland no remedy corresponding with an English indictment.

*Semble*, that the right to sue is commensurate with the right to use.

*Semble*, that a landowner may maintain an action of declarator to exclude the public from a road; but how far the decision would bind or be *res judicata*—*Quære*. *Atholl v. Torrie*, 1 Macq. 65.

Cases cited in the judgment: *Forbes v. Forbes*, 7 Shaw & D. 440; *Campbell v. Lang*, 13 New Ser. 1179.

#### WILL.

1. *Construction.—Setting apart annuity.—Conversion of funds.—Costs.*—A testator, after making certain specific bequests, proceeded as follows:—"I give and bequeath to my trustees, hereinafter named, so much of my personal estate and effects as, at the time of my decease, shall produce the clear annual income of 1,500*l.*; and I direct that the same shall be selected and appropriated and set apart, as soon as may be, &c., by my said trustees, in their uncontrolled discretion, upon trust to pay" to his wife the dividends during her life or widowhood, and after her death or second marriage, the same was to become part of his residuary personal estate. He directed, that if the annual produce so appropriated should be increased or reduced in amount, his wife was to receive the increased or reduced dividends, as the case might be, in lieu of those before directed to be paid to her. The trustees were fully empowered, at their discretion, to permit the personal estate to continue on the same securities as at the time of his decease, or to sell and re-invest, as the testator himself might do. Some of the foreign funds ceased to pay any dividends, and the trustees refused to exercise their discretion as to altering the investments, but submitted to act as the Court should direct.

The Court refused to exercise the discretion vested in the trustees, but acting on its general rule in such matters (as the testator had not expressed a different intention), directed the annuity to be raised by the purchase of an adequate sum in consols, and ordered the Master to inquire, having regard to the interests of other parties under the will, what investments must be called in to effect this object.

*Held*, that the decree thus made was correct.

The costs of the appeal were ordered to come out of the estate, but the trustee having unnecessarily printed certain documents for the hearing of the appeal, the costs of such printing were disallowed. *Prendergast v. Prendergast*, 3 H. of L. 195.

Cases cited in the judgment: *Penny v. Turner*, 2 Phill. 493; *Brown v. Higgs*, 4 Ves. 708; 5 Ves. 495; *Longmore v. Broom*, 7 Ves. 124; *Barrough v. Philcox*, 5 Myl. & C. 73, 92.

2. "*Right Heirs.*"—*Limitation of real and personal estate.—Power to convert personal estate.*—A testator made a will in the following

form:—"Whereas I am seized in fee simple of divers freehold manors, or reputed manors, messuages, lands, tenements, rents, and hereditaments, situate, &c., and of a leasehold estate in, &c., and also of a copyhold estate, situate, &c., and also of freehold estates in, &c., and of large sums in the funds of England. Now I do hereby give and devise, after my just debts and funeral expenses and legacies are paid (which I order to be paid out of my personal estate), all my estates in the funds of England and all my said manors, &c., unto three persons in succession, and their sons successively in tail male, in strict settlement; "and for default of such issue, I give and devise the same to my own right heirs for ever." He then gave his trustees a power, with the consent of the person who might be in possession, to lay out his personal estate in the purchase of freeholds, &c., and to settle the same when purchased to such uses as were declared of his "manors, or reputed manors, messuages, lands, tenements, rents, hereditaments, and premises devised by this my will, as shall be then existing undetermined, or capable of taking effect, &c., to, &c., for no other estate, use, trust, or purpose whatsoever."

*Held*, on appeal from the late Vice-Chancellor of England (15 Sim. 163), 1st, that the power to trustees to convert personally into realty did not operate as an absolute conversion: but, 2ndly, that, on the face of the will, it was the intention of the testator to make the two funds a blended property, and to give them the character of real estate, and to make both properties go together, and to give both to persons expressly designated; and that such intention did not cease with the failure of issue male under the limitations, so as to make the real estate afterwards go in one way and the personal estate in another. *De Beauvoir v. De Beauvoir*, 3 H. of L. 524.

Cases cited in the judgment: *Mounsey v. Blumire*, 4 Russ. 384; *Gittings v. McDermott*, 2 Myl. & K. 69; *Danvers v. Lord Clarendon*, 1 Vern. 55; *Holloway v. Holloway*, 5 Ves. 399; *Waite v. Templer*, 2 Sim. 541; *Pleydell v. Pleydell*, 1 P. Wms. 748; *Evans v. Salt*, 6 Beav. 266; *Swaine v. Burton*, 15 Ves. 365; *Wright v. Atkins*, 17 Ves. 255; 19 Ves. 299; *Coop. Ch. Ca.* 111; 1 Turn. & R. 143; *Forster v. Sierra*, 4 Ves. 766; *Gwynne v. Muddock*, 14 Ves. 488; *Boydell v. Golightly*, 14 Sim. 327.

#### WINDING-UP ACTS.

1. *Projected railway company.*—A projected railway company, provisionally registered, is within the meaning of the Winding-up Acts, which may therefore be applied to it, if a Court of Equity shall so think fit. *Bright v. Hutton*, 3 H. of L. 341; *Hutton v. Bright*, ib.

2. *Contributory's liability in Equity.*—The liability of a person as a contributory under the Winding-up Acts is not a question of law, but of fact. The test of his liability in equity is his liability at law. *Bright v. Hutton*, 3 H. of L. 341; *Hutton v. Bright*, ib.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, DECEMBER 25, 1852.  
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## CHANGE OF MINISTRY.

### RETIREMENT OF LORD ST. LEONARDS.

THE resignation of Earl Derby's Ministry, and the changes consequent thereupon, for the present absorb professional as well as public attention, and suspend the consideration of many topics which only a short time since were deemed most urgent and exciting.

Apart from personal or political predilections, the removal from the highest offices of Government, connected with the administration of the law, of the men who have so recently entered upon the great work—as yet only partially accomplished—of remodelling the legal institutions of the country, affords matter for serious and anxious reflection. The retirement of Lord St. Leonards at such a juncture can scarcely fail to be regarded as a public misfortune. A combination of circumstances, not requiring enumeration, have now concentrated public attention upon the practice and procedure of the Superior Courts to a degree never before known. Much has been done to remove the evils complained of, but much more remains to be done. Regarding Lord St. Leonards merely as a law reformer—irrespective of his views as a politician, or his capacity as a Judge—it must be universally conceded that, during his short tenure of office, he satisfied the Public and the Profession that he felt how much was required from him, and evinced remarkable aptitude and capability for successfully surmounting the difficulties he had to encounter. Bold, judicious, and indefatigable, he seemed to feel it was his mission to reduce to order the chaos in which the hasty acts of the last Session of Parliament had left the practice of the Court of Chancery, and set about the work

with an earnestness and determination that afforded the best security for ultimate success. Whatever may be the disposition or the competence of his successor, it is hardly to be expected that he will carry out Lord St. Leonards' plans precisely in the spirit in which they were conceived.

It has long been felt and acknowledged, that the multiplied and onerous duties, political, judicial, and administrative, which devolve upon the Lord Chancellor, are more than sufficient to overwhelm any man of ordinary ability, industry, and talent. The question has been, ever since Lord Hardwicke's day, whether the duties of the Chancellor could be efficiently discharged by any man. That question has been set at rest by Lord St. Leonards. It seems to be admitted on all hands that *he* was equal to his work.<sup>1</sup>

It is satisfactory to know that his services will not be lost to the country by his retirement from office. His experience, decision, and capacity for business, are sure to be appreciated in the House of Lords, and there can be little doubt that whoever is in office, Lord St. Leonards' views in reference to all measures introduced into that House relating to the law and its administration, will have due weight. There is some reason to hope, too, that arrangements will be made to secure the benefit of his Lordship's services permanently and regularly, upon the hearing of appeals in the Court of ultimate Appeal. Ability of the highest class is not in such excess in any department, that the Public can afford to lose a first-rate judicial mind!

<sup>1</sup> The division of labour, so admirably arranged by Lord Chancellor *Truro*, in the appellate jurisdiction of the Court of Chancery, should ever be remembered in the progress of useful Law Reform.

We are not yet in a position to announce with confidence the legal appointments under Lord Aberdeen's administration, and on this, as on analogous occasions, decline to bid for temporary notoriety by misleading our readers with statements founded upon vague rumour or idle conjecture. Whilst any uncertainty exists as to the persons composing the New Ministry, it would be vain to speculate upon its politics or principles. It is quite clear, however, that whoever may be in or out of office, the course of legal improvement, traced out by the measures of the last Session of Parliament, and since partially carried into effect, must be proceeded with. The friends of progressive law reform justly attach much importance to the character of the persons to whom the delicate and responsible duty is about to be transferred of controlling and directing the measures necessary for completing what has been commenced, as well as of originating and framing such further changes as may be found expedient. It is earnestly to be hoped that measures of this nature may continue to be regarded without reference to party politics, and neither accelerated nor delayed for purposes of personal ambition. Some symptoms have already been manifested amongst the lawyers in Parliament, of a disposition to distance each other in the race of law reform. This is a species of competition which can neither produce benefit to the Public nor lasting credit to the individuals engaged in it, and we trust hereafter to find it discountenanced by persons in authority, as it will assuredly be condemned by the calm judgment of the country.

## TAXES ON JUSTICE.

### COMMON LAW FEES.

OUR attention has been called to the large increase which has taken place in many of the Common Law Fees of Office. The scale was settled by the Treasury on the 20th November, approved by the Judges on the 22nd, and published in the *Gazette* on the 24th. We laid them before our readers in the Number for the 27th November.

A correspondent adverts to the congratulations of several of the Judges on the "great boon" conferred on the public by the reduction of fees. We believe that numerous complaints have been made to the Judges and Masters regarding the amount of these fees,—some of which are entirely

new, and others are considerably increased. True it is, that the fees on the trial of causes are materially diminished, but inasmuch as 95 actions out of every 100 do not proceed to trial, the exaction of increased fees on the preliminary stages and in undefended cases is very oppressive to the suitor. We believe that the following fees are almost all that have been abolished:—

	s.	d.
Appearance <i>sec. stat.</i> . . . .	2	0
Rule to plead . . . . .	1	0
Rule to plead several matters . . . .	5	0
Counsel's signature . . . . .	10	6
Passing record . . . . .	7	0
Pleading fee . . . . .	7	0
Returning venire . . . . .	3	6
Distringas . . . . .	12	0

On the other hand, the following fees have been increased:—

	s.	d.
Writs under 20 <i>l.</i> , from 1 <i>s.</i> to . . . .	5	0
Filing affidavits, writs, &c., 1 <i>s.</i> to . .	2	0
Amending every writ, &c., 6 <i>d.</i> to . .	2	0
Final judgment (except judgment by default), 8 <i>s.</i> to . . . . .	10	0
Taxing bills of costs double the former charge.		
Judges' orders, 3 <i>s.</i> to . . . . .	5	0

The following are entirely new fees:—

	s.	d.
On paying money into Court for sums under 50 <i>l.</i> . . . . .	5	0
50 <i>l.</i> and under 100 <i>l.</i> . . . . .	10	0
100 <i>l.</i> and above . . . . .	20	0
Searching for appearances and declarations, <i>each search</i> . . . . .	0	6
Appearance-fee on each defendant, after the 1st . . . . .	1	0
Every amendment of proceeding . . .	2	0

We understand that the remonstances against this taxation have been communicated to the Treasury, and that the authorities there have determined to make no reduction at present, but to wait the result of their receipts at the expiration of six months, when if the amount shall have exceeded the expenditure, they will be willing to reduce or abolish a proportionate amount of fees. In the meantime, therefore, the Profession must submit to the grievance, and be prepared, when the time arrives, to suggest the repeal or alteration of such of these imposts as will afford the best relief to the suitor. It seems that the Treasury, notwithstanding the inclination of Parliament to throw on the Consolidated Fund the expense of administering justice, feel justified in raising an ample amount to defray the compensations and pensions on the abolition of useless offices, as well as

the salaries of the officers and clerks who perform the present duties. We trust that the valuable precedent established under the Act of last Session for the Relief of the Suitors will be followed after the Recess, by petitions to Parliament for further relief against the oppressive burdens in the Common Law Courts.

## FURTHER ORDERS IN CHANCERY.

### CONVEYANCING COUNSEL.—REFERENCES.

16th December, 1852.

1. THE business to be referred to the conveyancing counsel nominated by the Lord Chancellor under the 15 & 16 Vict. c. 80, s. 41, is to be distributed among such counsel in rotation by the first clerk to the registrars for the time being, and during his occasional or necessary absence by the second clerk to the registrars for the time being, and during the occasional or necessary absence of both such clerks, then by such one of the other clerks to the registrars as the first registrar for the time being may nominate for that purpose.

2. The clerk making such distribution as aforesaid is to be responsible that the business is distributed according to regular and just rotation and in such manner as to keep secret from all persons the rota or succession of conveyancing counsel to whom such business is referred; and it shall be his duty to keep a record of such references with proper indexes, and to enter therein all such references.

3. When the Court, or a Judge sitting at Chambers, shall direct any business to be referred to any such conveyancing counsel, a short memorandum or minute of such direction is to be prepared and signed by the registrar, if the same shall have been given in Court, or by the Judge's chief clerk if given in Chambers, and the party prosecuting such direction, or his solicitor, is to take such memorandum or minute to the registrar's clerk,<sup>1</sup> whose duty it shall be to make such distribution as aforesaid, and such clerk is to add at the foot thereof a note specifying the name of the conveyancing counsel in rotation to whom such business is to be referred, and such memorandum or minute is to be left by the party prosecuting such direction, or his solicitor, with such conveyancing counsel, and shall be a sufficient authority for him to proceed with the business so referred.

4. In case the conveyancing counsel in rotation shall from illness or from any other cause be unable or decline to accept any such reference, the same shall be offered to the other conveyancing counsel appointed as aforesaid, successively, according to their seniority at the

Bar,<sup>2</sup> until some one of them shall accept the same.

5. The preceding orders are not to interfere with the power of the Court or of the Judge sitting at Chambers to direct or transfer a reference to any one in particular of the said conveyancing counsel, where the circumstances of the case may, in his opinion, render it expedient.

ST. LEONARDS, C.

### NOTICE AT THE REGISTRARS' OFFICE.

18th December, 1852.

In all cases in which the Courts or either of the Judges sitting at Chambers shall direct any business to be referred to any of the conveyancing counsel the memorandum or minute of such direction, signed by the registrar if the same shall be given in Court, or by the Judge's chief clerk if given in Chambers, is to be taken by the party prosecuting such direction, or his solicitor, to Mr. Metcalfe, at Mr. Walker's seat, and in Mr. Metcalfe's absence to Mr. Merivale, at Mr. Monro's seat, between the hours of 11 and 1 o'clock, who will write the name of the conveyancing counsel in rotation on such memorandum or minute.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### BANK NOTES.

16 VICT. c. 2.

An Act to amend an Act of the First Year of King George the Fourth, for the further Prevention of forging and counterfeiting Bank Notes. [16th December, 1852.]

Whereas by an Act passed in the 1st Geo. 4, it was enacted, that all bank notes of the Governor and Company of the Bank of England of the description therein mentioned, whereon the names of the persons intrusted by the governor and company to sign the same should be impressed by machinery with the authority of the said governor and company, should be good and valid: And whereas doubts have arisen whether the provisions of the said Act are not limited to notes of the particular description therein mentioned: Be it therefore declared and enacted, That all notes, bank post bills, and bank bills of exchange of the said governor and company, whereon the name or names of one of the cashiers of the said governor and company for the time being, or other officer appointed or to be appointed by the said governor and company in that behalf, shall or may be impressed or affixed by machinery provided for that purpose by the said governor and company, and with the authority of the said governor and company,

<sup>1</sup> See the following notice at the Registrars' Office as to the clerk who is to do this duty, and the time within which it is to be done.

<sup>2</sup> The following are the names of the conveyancing counsel in the order of their seniority;—Mr. Brodie, Mr. Coote, Mr. Hayes, Mr. Christie, Mr. Jarman, and Mr. Lewin.



shall be taken to be good and valid to all intents and purposes as if such notes, bank post bills, and bank bills of exchange had been subscribed in the proper handwriting of such cashier or other officer as aforesaid, and shall be deemed and taken to be bank notes, bank post bills, and bank bills of exchange within the meaning of all laws and statutes whatsoever, and shall and may be described as bank notes, bank post bills, and bank bills of exchange respectively in all indictments and other criminal and civil proceedings whatsoever, any law, statute, or usage to the contrary notwithstanding.

#### COMMON INCLOSURE.

16 VICT. c. 3.

An Act to authorise the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales.

[16th Dec. 1852.]

1. Whereas the Inclosure Commissioners for England and Wales have, in pursuance of "The Acts for the Inclosure, Exchange, and Improvement of Land," issued their provisional orders for and concerning the proposed inclosures mentioned in the schedule to this Act, and the requisite consents thereto have been given since the date of their Seventh Annual General Report: And whereas the said Commissioners have by a special report certified their opinion that such proposed inclosures would be expedient; but the same cannot be proceeded with without the previous authority of Parliament: Be it enacted, That the said several proposed inclosures mentioned in the schedule to this Act be proceeded with.

2. And be it enacted, That in citing this Act in other acts of Parliament, and in legal instruments, it shall be sufficient to use either the expression, "The Second Annual Inclosure Act, 1852," or "The Acts for the Inclosure, Exchange, and Improvement of Land."

#### SCHEDULE TO WHICH THIS ACT REFERS.

INCLOSURE.	COUNTY.	DATE OF PROVISIONAL ORDER.
Brampton and Shilton . . . .	Oxford and Berks . . . .	23rd January, 1852.
Homanton . . . . .	Wilts . . . . .	19th February, 1852.
Hareshaw Common . . . .	Northumberland . . . .	23rd January, 1852.
Beedon Common . . . . .	Berks . . . . .	23rd March, 1852.
Wigginton . . . . .	Hertford . . . . .	23rd March, 1852.
Broadhalfpenny Down . . .	Southampton . . . . .	18th June, 1851.
Snetterton . . . . .	Norfolk . . . . .	28th August, 1851.
Morestead Down . . . . .	Southampton . . . . .	20th April, 1852.
Watford Field . . . . .	Hertford . . . . .	12th July, 1852.
Great Marlow . . . . .	Bucks . . . . .	14th May, 1852.
Osehill Common . . . . .	Dorset . . . . .	2nd July, 1852.
Magor . . . . .	Monmouth . . . . .	2nd July, 1852.
Undy . . . . .	Monmouth . . . . .	2nd July, 1852.
Eaton Bray . . . . .	Bedford . . . . .	12th July, 1852.
Waitby Common . . . . .	Westmoreland . . . . .	2nd July, 1852.
Kirkby Stephen Common . .	Westmoreland . . . . .	2nd July, 1852.
Llanllugan Manor . . . . .	Montgomery . . . . .	7th May, 1852.
Clayton . . . . .	Sussex . . . . .	7th May, 1852.
Acklam Wold . . . . .	York . . . . .	20th April, 1852.
Haughton . . . . .	Chester . . . . .	2nd July, 1852.
Ditton Common . . . . .	Kent . . . . .	2nd July, 1852.
High Oak Common . . . . .	Hertford . . . . .	4th October, 1852.
Musley Common . . . . .	Hertford . . . . .	4th October, 1852.
Aubourn . . . . .	Lincoln . . . . .	4th October, 1852.
Fradswell Heath . . . . .	Stafford . . . . .	24th June, 1852.
Bensington, Berrick, Salome and Eweleme . . . . .	Oxford . . . . .	24th June, 1852.

#### ADDRESS TO MASTER FARRER.

London, August, 1852.

To JAMES W. FARRER, ESQ., MASTER IN CHANCERY.

THE undersigned Solicitors desire, upon your retirement from office under the Masters' Abolition Act, to express the deep feeling of respect and gratitude which their experience of

your services to the suitor, and your uniform kindness and attention to the practitioners have led them to entertain.

(Signed)

Gregory, Faulkner, and Co.  
Coverdale, Lee, and Purvis  
Thomas Kennedy  
Tatham, Upton, Upton, and Johnson  
Lyon, Barnes, and Ellis  
Clowes, Wedlake, and Co.

R. M. and F. Lowe  
 Chilton, Burton, and Johnson  
 Taylor and Collison  
 Norris, Allen, and Simpeon  
 Sadlow, Torr, and Janeway  
 Sharp, Field, and Jackson  
 Clayton, Cookson, and Wainwright  
 Sidney Bealy  
 Few and Co.  
 Wright and Kingsford  
 Keightley, Cunliffe, and Beaumont  
 Capes and Stuart  
 Thomas White and Sons  
 Hume, Bird, and Hume  
 G. Bower  
 Tilson, Clarke, and Morice  
 Nicholas Gedye  
 Roumieu, Walters, and Co.  
 Meredith, Reeve, and Co.  
 Tatham and Son  
 Palmer, France, and Palmer  
 Thomas Holmes Bower  
 Leonard Hicks, Gray's Inn  
 L. H. Hicks, Gray's Inn  
 Young and Vallings, St. Mildred's Court  
 Tucker and Sons  
 Charles Druce and Sons  
 Desborough, Young, and Desborough  
 Walker, Grant, and Co.  
 George Weller  
 Mounilyan and Rowsell  
 Richard B. Armstrong, Staple Inn  
 Trinder and Eyre, 1, John Street  
 Brooksbank and Farn, Gray's Inn  
 Baxter and Somerville, 48, Linc. Inn Fields  
 Willan and Stevenson, 35, Bedford Row  
 Tooke, Son, and Hallowes, 39, Bedford Row

*Metropolitan and Provincial Law Association,  
 8, Bedford Row, 31st August, 1852.  
 J. W. FARRER, Esq.*

SIR,—I have the honour to forward to you the accompanying testimonial, in accordance with the request of the gentlemen who have signed it, and am, sir, your obedient servant,  
 WILLIAM SHAEN, *Secretary.*

The following is the Master's answer to the Address :—

*John Street, Berkeley Square,  
 1st September, 1852.*

SIR,—I thank you for your letter, which I received last night.

The expression of feeling towards me, signed by so many of the most experienced and leading practitioners in the Masters' Offices, which it encloses, is most gratifying, especially under the circumstances which have led to the abolition of the office of Master in Chancery.

Upon my appointment in 1824, by Lord Chancellor Eldon, I determined to do my utmost to gain the confidence of the Profession. Whether I had succeeded was in doubt, until I received the document forwarded by you. That document justifies me in indulging in the very satisfactory conclusion that I have succeeded.

Assure the parties whose names are attached to it, of the real gratification it gives me. I look upon it, not alone as their expression of feeling towards me, but as proof that a similar kind feeling exists in the Profession in general towards your obedient and faithful servant,

(Signed) J. W. FARRER.  
*William Shaen, Esq., Secretary to the Metro-  
 politan and Provincial Law Association.*

We have delayed the insertion of this Testimonial, expecting to receive the names of other solicitors who were desirous of showing their respect to the late Senior Master of the Court of Chancery on his retirement. Many of them were the more anxious to express their sentiments, both of regard and respect, from the recollection that several members of the Master's family had been in the last age, and others still are, eminent for their station and high character in that branch of the Profession to which the solicitors belong. The additional names will be published as soon as received.

#### ALTERATIONS IN THE LAW.

*To the Editor of the Legal Observer.*

SIR,—There is an old adage that nothing is cheap that you do not want,—how strangely may a few syllables be applied. In a reverie, into which I was thrown by the heterogeneous mass of "Amendment of Procedure" and "Improvement of Jurisdiction" which has lately been thrust upon the English Courts of Justice, it seemed to me that the great lexicographer's description of a patron as one who encumbers with help when it is not required, may be as appropriately applied to a legislature which attempts to assist an operation which it will not take the trouble to understand. Now, sir, under this category we may append our (or rather *their*) recent improvement of jurisdiction and procedure amendment. We live in an age of statistics, and therefore details have now become objects of interest which would in former times have remained secret because of the difficulty of the uninitiated appreciating their mysteries. Certain animals are endowed with faculties which enable them to endure the peculiarities of their respective elements. The lawyer is here within the pale of analogy, although the society in which he lives may not enable him to become (or to be tolerated if he should become) a Solon or Lycurgus, but certainly it is to be regretted that so few of the Profession think it worth while to raise their voices against the absurd nonentities that are foisted upon the country as amendments and improvements of the law. This is a duty which appertains not so much to the Bar as to that branch of the Profession whose avocations more immediately bring them in contact with the operation of the laws. Without desiring

to write a treatise on a subject which I think will be generally admitted, the mere exposure of cases of injustice and failures of justice by technicalities (which must fall under the notice of attorneys) would surely be a great advantage to the public. But to return to the "amendment" and "improvement" which should be before us. Your readers are doubtless aware, if not well acquainted with, *three* new Acts of Parliament,—one to amend the practice of the Superior Courts; a second to abolish the office of Master in Chancery and for despatch of business; and the *third* to amend the practice in Chancery. Now, sir, to do justice to these Acts, I at once admit that they are the best I ever saw,—at least the intention deserves high commendation; but this is rather a censure upon Acts of Parliament *generally* than an encomium upon the individual Acts.

To commence with No. 1,—*The Common Law Procedure Act*. We have (or *had*) a theory in law by which we professed to respect one day of the week,—"*mais nous avons changé tout cela*,"—therefore this Act (as a precedent I suppose) comes into operation on the 24th of October—a *Sunday*. Now, as it would not be polite to imagine that "the Queen's most excellent Majesty and the Lords Spiritual and Temporal and Commons in Parliament assembled" could be guilty of negligence, of course the result is plain that this Act is intentionally made to commence on a Sunday. However that may be, an expounder or interpreter of this Act may be puzzled for a reason why so important an Act of Parliament comes in force on a *dies non*; it may be an evidence of the extraordinary care and attention bestowed, although had an attorney been so attentive to his client's interest as to start the fashion for dating legal proceedings on a Sunday it might be considered that he had been somewhat *too* attentive to the interest of his client. It would be difficult to review this Act in the small space of a letter, but I think it is hardly fair that the world should give that credit to Parliament which properly belongs to members of the Profession of whatever branch it may consist, particularly as the *best* part of this Act was suggested by attorneys. The second set of Rules, Hilary Term, 4 Wm. 4, rule 1, is almost *verbatim* with the 54th section of the new Act. Rule 9 is almost *verbatim* with the 66th section, and Rules 10 and 11 with the 67th section. Probably some of your readers may be able to divine some advantage to be obtained by enacting this as law which is so without enactment,—the only one which suggests itself to me is the one which must accrue to the Queen's printer (which be it remembered is at the *expense* of that class which must pay for Acts of Parliament). It may be wrong, but some persons might think that to compel a purchaser to buy that which he does not want for the sake of that which he does is rather a one-sided specimen of Free Trade. The 6th section directs that the writ be *issued* into the county where the defendant resides, but the 14th section enacts that it may be *served* in

any county. The 9th section contemplates that service in *any* county may not be sufficient for the ends of justice, and accordingly enacts that *concurrent* writs may be issued in a limited manner therein described, the value of which seems to be rather problematical. The use of a concurrent writ formerly was (or was understood to be) the possibility of service in a different county than that into which the original writ issued. If it be on account of the plurality of defendants that the new concurrent writ is given, it certainly would appear a very clumsy way of amending the law to allow a writ to be served in any county, and yet if it be necessary to serve more than one defendant in different counties you must have two, three, or more writs. It seems to me, that instead of calling them concurrent writs, they would be better known as complicated writs. The 21st section is a *chef d'œuvre* of imperfection, which to be fully appreciated must be carefully read (and if possible digested),—its sublimity exists in its last two words, which are well adapted to invite negligence and carelessness on the parts of attorneys and their clerks. The 24th section abolishes distringas, and by *consequence* inferentially outlawry upon *mesne* process. It is desirable that outlawry should be abolished or at least altered, but why is outlawry on *final* process to remain in *statu quo*. By the Law of Outlawry the defendant on *mesne* process *must not be* in England. By the Law of Outlawry, the defendant on *final* process *must be* in England, or the outlawry was reversible. But it becomes wearisome to find fault, and the public must experience the metaphysical sublimity of such a system of amendment of procedure.

The second Act is for the *Abolition of the Masters' Office in Chancery*, and for the despatch of business in the said Court. What an affinity there is between the despatch of business and the despatching of the Masters, I know not, but doubtless some of your correspondents can enlighten the Profession.

The third Act, called An Act for the *Improvement of the Jurisdiction of Equity*, is entitled "to Amend the Practice and course of Proceeding in the High Court of Chancery." Surely it requires a "lynx-eyed" Chancellor to observe the nicety of distinction in the titles. Is it not something new to speak of the *practice* as superior to the *jurisdiction*? With regard to these Acts, therefore, we may say the first is the best of the three—but the second and third are so incongruously mixed, that if passed at all, either they should have been very differently divided, or else they should have been passed as one Act.

With regard to the methods adopted for *Reform* they are rather amusing if it be only from the manifest contradictions they present, thus—Chancery is tired of petty slips of subpoena to appear and writs of summonses, and for the future, to ensure the complete *dégoût* of every one for Chancery proceedings, declares the defendant shall have a printed *bill* of complaint, section 3. The section 4 directs, that the printed *bill* be filed, and the section 5 enacts, that a

printed copy bill shall be served on defendant. So the defendants is to have the bill which is to be filed, and a copy besides—I hope he will find them interesting. Certainly the section 9 anticipates the probable reception of this petty chaos of incomprehensible legislation, by making it lawful for the Lord Chancellor to go back to the original state of things. The section 10 directs, that every bill of complaint shall be framed in a particular form, with numbered paragraphs. The section 37 enacts, that every affidavit shall be divided into paragraphs, and every paragraph shall be numbered. By the section 12, interrogatories are to be filed, separate from the bill, and no defendant shall be required to answer unless interrogatories are filed, and by the section 13, the defendant may file an answer, even if interrogatories are not filed. So much for the formality of accidental pleadings as improved by the late Act. On examination of the three Acts, the result is plain. The Common Law Procedure Act

*seeks to extend the use of the writ, as being the most simple form, and the Act for Improvement of Equity destroys the writ.* The Common Law Procedure Act, to a certain extent, *abolishes special pleading*—the Act for the Improvement of Equity *endeavours to frame one.* This does seem like burning the candle at both ends—one Act certainly proceeds on a very different theory from the other, the one to simplify, the other to render complex the subject to be dealt with. The Common Law Procedure Act is undoubtedly founded on common sense, but the Act for the Improvement of Equity is founded (if it has any foundation at all) on something far inferior, and the sooner that blotch is off the Statute Book the better, at least such is the humble opinion of

T. H. S.

[We insert our Correspondent's remarks, but cannot agree in the justice of many of them.—Ed.]

## ATTORNEYS TO BE ADMITTED.

*Hilary Term, 1853.\**

*Queen's Bench.*

### *Clerks' Names and Residences.*

### *To whom Articled, Assigned, &c.*

Adye, Arthur, jun., 9, Devonshire-st., Red-lion-sq.; Bradford, Wilts; and Gt. James-st.	Wm. Stone
Appleton, Henry, Stokesley	J. P. Sowerby
Aspinall, Clarke, new Ferry, near Liverpool	John Collinson; Richard Radcliffe
Ayre, Charles Edward, 8, New Palace-yard; and Kingston-upon-Hull	W. Ayre, jun.; W. Sanger
Babington, John, 37, Store-st., Bedford-sq.	E. Babington; James Scott
Baddeley, Thomas, jun., 38, Gloucester-terrace, Mile End	Thomas Baddeley
Bartleet, William Smith, Stourbridge; and Blake-down	George C. Vernon and L. Minshall
Baugh, George, 11, Blomfield-ter., Pimlico; and Broseley	G. Potts
Bayley, Edw. D'Oyly, Stockton-on-Tees; and Pakenham-st.	William Bayley, Henry Barnes, and Joseph Dodds
Bell, John Leonard, 2, Vernon-pl., Bloomsbury-sq.; Bourn; and University-st.	William David Bell
Bell, Octavius, Much Hadham; Newcastle-on-Tyne; 31, Frederick-street, St. Pancras	Cuthbert Umfreville Laws
Berridge, Robert Bristow, 18, Ampton-st., Gray's-inn; and Leicester	Samuel Berridge
Bimson, John, Everton, Liverpool	George Barker Carter
Breeze, Robert, 21, St. Mary-le-Strand-place, Old Kent-road	J. Newbold; E. W. Field
Broad, Joseph, Tunstall	William Cooper
Bunting, John, 9, Percy-circus, Fentonville; and Mansfield	James Blythe Simpson; Richard Parsons
Burch, Arthur, 5, Pilgrim-street; St. Thomas the Apostle; Devonshire	William Lambert, jun.; C. H. R. Rhodes
Calthrop, Thomas Dounie, 4, Upper-park-place, Blackheath	John Snaith Rymer
Carrington, Charles James, 4, Cambridge-terrace, Islington; and Crofts Bank, near Manchester	John Barlow, jun.
Cartwright, John Urry H., Lower Brunswick-ter.; Baker-street; Bawtry	F. H. Cartwright; T. C. Leitch; and W. Thorpe

\* The names of 51 applicants, who gave notice for Michaelmas Term, as well as Hilary, and who were examined and admitted in Michaelmas Term, are omitted in this List. The number, which would have been 143 for next Term, is now reduced to 92, and even some of these have not given Examination notices; so that at present the number is only 84.

*Clerks' Names and Residences.**To whom Articled, Assigned, &c.*

Clark, Frederick, Snaith	E. E. Clark
Cookerill, Thomas Marshall, 10, Symond's-inn	Henry Heane; William Dean
Cooper, Thomas, Kidderminster	William Boycott
Cross, John, 17, Bernard-street, Russell-square	James Cross
Durrant, Benj. Chandler, Sherborne; and Poole	T. Durant; B. Chandler, jun.
Earle, Charles, 12, Old Quebec-street, Portman-sq.	G. Sperling
Earle, Henry Benjamin, 47, Lincoln's-inn-fields; and Andover	Henry Earle
Edge, James Henry, 7, Denmark-st., Islington; and Liverpool	John Atkinson
Evans, Asa Johnes, Penrallt, Cadogan; and 18, Upper Marylebone-street	James Smith
Fewster, John Reed, 41, Alfred-street, Islington; Gordon-street; and Durham	R. J. Shafto
Freeman, Charles Edward, 2, Chalcot-villas, Hampstead	Henry Abbott
Gaitkell, Alfred Ashley, Streatham	T. Pryer; W. S. Gaitkell; and T. H. Devonshire
Girdlestone, James, Kingwinford; and Gerard-st. Groves, Thomas George, 24, Newington-crescent	J. Harwood
Hampson, Francis, Plaistow; and Rusholme	James Leman
Hanmer, Philip, 73, Margaret-street, Cavendish-square	John Hampson
Hayman, Philip Charles, 4, Gray's-inn-square; and Old Bond-street	Messrs. Potts and Brown
Hodgson, James Leyland, Hulme-within-Manchester; Walmer-place; Longsit-within-Manchester	H. Trenchard; and H. S. Westmacott
Howell, Nathl., 8, Esher-st., Kennington; Portsea	Thomas Dodge; and Alfred Lloyd Hardman
Jeffery, George, 42, Seymour-st., Liverpool; and Swinton-st., Gray's-inn-road	Archibald Low
Jennins, Charles, 26, Bryanstone-street, Portman-sq.; and Bath	Herbert Menda Gibson
Kaye, George Edwd., 8, Russell-st., North Brixton	Philip Henry Watts
Keays, Frederick, 8, Fitzroy-place, Kentish-town	C. Kaye
Kough, Samuel Harley, Shrewsbury; Warwick-court; and New Ross	R. Fisher
Last, Frederick, Hadleigh	T. H. Kough
Lucas, Thomas Edward, Taunton-place, Regent's-park	A. C. Veley; J. Last; and H. Last
Maclure, Bowman, 14, Harley-street, Cavendish-square	James Ingram
Mander, Charles John, 38, Ladbrook-square; Notting-hill; Little Ealing	Thomas Alley Jones
Markby, Henry, 63, Charlewood-street, Pimlico	James Josiah Millard
Matthews, John Williams, Plymouth	Messrs. Crabtree and Cross
Moore, Wm. Walter Kelland, 5, Blenheim-terrace, Abbey-rd., St. John's-wood; and Tooley-st.	Alfred Rooker
Nairn, Henry Pearson, Twickenham	Henry Wilcocks Hooper
Naters, Henry Trehitt, 17, King Edward-street, Liverpool-road; and Nassau-st.	Edward Watts; and James Kingsford
Neate, Albert, 40, Duke-st., Manchester-sq.	George Walton Wright; and Frederick Turner
Nisbet, Henry Curtis, 10, Charles-street, Middlesex-hospital	John Neate
Payne, John Brown, Manchester	A. Bell
Pollock, Alfred Atkinson, 6, Frederick's-place, Old Jewry	Alexander Oliver
Pownall, Henry Smith, 22, Gloucester-road, Regent's-park	P. R. Alderson; P. J. T. Pearce; and P. J. T. Pearce, jun.
Proud, John, jun., 2, Studley-road, Clapham; and Durham	William Pownall
Purchas, James Bishop, 43, Amptill-square; and Ross	Henry John Marshall
Ram, Stephen Adye, 23, Red-lion-square; and Bartholomew-place	W. P. Hooper
Roberts, Samuel, Lincoln; River-street, Myddleton-square; and Gerrard-street, Islington	J. Inglis
Robson, John, jun., 7, Clarence-terrace, Regent's-park	Richard Mason
Sanger, John Hill Melton, Lower Calthorpe-st.; Exeter; Devereux-court; Maze-pond; and Devonshire-street	J. Robson
Sankey, Herbert Tritton, 11, New Ormond-street; Canterbury; and Great Ormond-street	R. Wreford; and J. N. Wilson
	Robert Sankey; and William Pain Beecham

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

Scott, George Edwards, 22, Alpha-road, St. John's-wood; and Conduit-street, Regent-street	Frederick James Fuller
Scott, George Wm., 2, Great Dean's-yard, Westminster	James Scott
Selby, James Addison, 17, Clifford's-inn; and Albany-street, Regent's-park	Thomas Selby
Senior, Frederick Bernard, 3, Warwick-square, Kensington; and Kew	William Chapman
Sheppard, Augustus Frederick, Bellefield-house; and Parson's-green, Fulham	W. Parsons; and J. King
Simpson, James Tennant, 5, Montague-place, Russell-square	James Alexander Simpson
Smith, Frederick, Hungerford; and Caroline-st., Bedford-square	W. W. Smith; W. Turner; and W. Withall
Smith, Job Orton, 25, Bernard-street, Russell-square; and Canonbury-terrace	Philetus Richardson
Snowball, George, Sunderland	George Walton Wright
Sparrow, William David Lloyd, Derby; and 6, Waverley-place, St. John's-wood	James Blythe Simpson
Stiffe, Francis William Everitt, 8, Clement's-inn; Clifton; and Percy-circus, Pentonville	Alfred Cox
Thomas, Richard Aubrey, Green-hall, Carmarthen; Surrey-street, Strand; Hall-street, Islington	George Thomas, jun.
Turner, George, Kinghorn-cottage, Coborn-street, Bow-road	William Henry Turner
Utterton, Edwin, Earl's-wood, Reigate	Messrs. Dawes and Sons
Waller, Robert, Albany-street, Regent's-park; Wolverhampton; Westbourne-terrace	Messrs. Deakin and Dent
Wallis, Wm. Talbot, Devereux-chambers, Strand	R. B. Beddome
Warwick, James Bailey, 17, Upper North-place, Gray's-inn-road	Maurice Peter Moore
Waugh, George, jun., 5, Great James-street; and Worthing	G. Waugh, sen.; and R. Edmunds
Weekes, Charles Henry, 4, High-street, Bloomsbury; and Lamerton by Tavistock	George W. Snell; and John V. Bridgman
Whitfield, John Charles, Bristol	W. Gresham; W. B. Cooper; George Wm. Whitaker; Wm. Bartholomew; and Wm. Beavan
Wightwick, William, Newgate-st.; Brunswick-st., Dover-road; Spencer-place, Brixton-road	Peter W. Fry
Williams, Ebenezer Robins, 30, Claremont-square, Pentonville; and Edgbaston	R. Gillam; I. O. Jones; and R. Gillam, jun.
Winears, William Good, 45, Gower-pl., Easton-square; and Norwich	William Rackham
Wright, Egerton Leigh, Wigan	R. Bloxham; R. Darlington; and T. F. Taylor
Wyatt, William, 12, Cavendish-rd., Wandsworth; and Stratford-place, Camden New-road	Nathaniel Mason

*Added to the List pursuant to Judge's Orders.*

Chisholme, John, 29, Edward-st., Hampstead-rd.	John Charles Hall
McClure, Edward Wade, Sandbach	E. Lewis; A. McClure; and J. Remer

**PROFESSIONAL LISTS.**

**PERPETUAL COMMISSIONERS.**

*Appointed under the Fines and Recoveries' Act, with dates when gazetted.*

Beale, William John, Birmingham, in and for the County of Warwick, also in and for the Counties of Stafford and Worcester. Dec. 7.

Ford, Brutton John, Exeter, in and for the City and County of the City of Exeter, also in and for the County of Devon. Nov. 30.

Shindler, Robert, Chatham, in and for the County of Kent. Nov. 30.

**MASTERS EXTRAORDINARY IN CHANCERY.**

*From November 23rd to Dec. 17th, 1852, both inclusive, with dates when gazetted.*

Shindler, Robert, Brompton, Kent. Nov. 30.  
Stansfield, John, Todmorden. Nov. 30.

**DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

*From November 23rd to Dec. 17th, 1852, both inclusive, with dates when gazetted.*

Catterall, Peter, and Paul Catterall, jun., Preston, Attorneys and Solicitors. Dec. 10.  
Gaskell, John and Thomas Frederick Taylor, Wigan, Attorneys and Solicitors. Dec. 17.

Hancock, Charles, and Henry Wells Young  
20, Tokenhouse Yard, Solicitors and Attorneys.  
Nov. 30.

Irwin, Anthony Wellington, and John Rowland Taylor, 5, Verulam Buildings, Gray's Inn, Attorneys, Solicitors, and Conveyancers. Dec. 3.

## NOTES OF THE WEEK.

### NEW COMMON LAW RULES.

We understand that the Judges, assisted by the Masters, are engaged in consolidating and amending the whole of the Common Law Rules, so as to form, with the Common Law Procedure Act, a complete *Code of Practice*. This will be a very desirable work, alike advantageous to all branches of the Profession, facilitating the transaction of business, and conferring benefit, as such improvements necessarily must, on the suitor.

### CHANCERY CHAMBERS BUSINESS.

All applications for time to plead, answer, or demur, and for enlarging publication, or the time for closing evidence, are to be made during the Christmas Vacation at the Chambers of Vice-Chancellor Kindersley, at 15, Lincoln's Inn Old Square.

### NEW MEMBERS OF PARLIAMENT.

*Roger Johnson Smyth, Esq.*, for Lisburn, in the room of Sir James Emerson Tennent, who has accepted the office of Steward of her Majesty's Manor of Northstead.

*Henry Austin Bruce, Esq.*, for Merthyr Tydvil, in the room of Josiah John Guest, Bart., deceased.

### LAW APPOINTMENTS.

The Queen has been graciously pleased to appoint *George Canning Backhouse, Esq.*, to be her Majesty's Judge in the mixed Court established at the Havanna under the Treaty of the 28th of June, 1835, between Great Britain and

Spain for the Abolition of the Slave Trade, in the room of James Kennedy, Esq., retired.

The Queen has also been pleased to appoint *Adam Murray Alexander, Esq.*, to be Second Puisne Judge of the Colony of British Guiana.—From the *London Gazette* of 21st Dec.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

### House of Lords.

#### New Bills.

Oaths in Chancery. Lord Chancellor.—*Passed.*

Law of Evidence and Procedure. Lord Brougham.—For 2nd reading.

County Courts' Equitable Jurisdiction. Lord Brougham.—For 2nd reading.

County Courts' Further Extension. Lord Brougham.—For 2nd reading.

District Courts of Bankruptcy Abolition. Lord Brougham.—For 2nd reading.

Metropolitan Building Act further Amendment. For 2nd reading.

Stamp Duties on Patents. Lord Chancellor.—2nd reading, 23rd Dec.

### House of Commons.

#### New Bills.

County Elections Polls. Lord Robert Grosvenor.—For 3rd reading, 16th Dec.

Stamp Duties on Patents for Inventions. Mr. Wilson Patten.—*Passed.*

Courts of Common Law (Ireland). Solicitor-General of Ireland.—In Committee, 15th Dec.

Parliamentary Electors' Rates. Sir De Lacy Evans.—*Negatived.*

County Financial Boards for Rating and expenditure. Mr. Milner Gibson.—For 2nd reading, 23rd Feb.

Designs' Act Extension. Lord Naas.—For 2nd reading, 16th Feb.

Parish Constables. Mr. Deedes. For 2nd reading.

Land Improvement (Ireland). In Committee, 16th Feb.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

Dec. 15.—*In re Monmouthshire and Glamorganshire Banking Company, ex parte Cape's executors*—Appeal dismissed, with costs, from the Master of the Rolls.

— 15.—*Sheffield v. Lord Coventry*—Decree of Master of the Rolls reversed.

Dec. 18.—*Cox v. Dolman*—Plaintiff held entitled to recover arrears of annuity.

— 18, 20.—*Kerr v. Middlesex Hospital*—Appeal allowed from the Master of the Rolls.

**Lords Justices.**

*Maxwell v. Maxwell.* Nov. 3, 4, 1852.

WILL.—CONSTRUCTION.—DESCENT OF ESTATES NOT PASSED TO HEIR.—ELECTION.

*A testator, resident in England but having heritable securities in Scotland, by his will, dated in 1821, and executed so as to pass real estate according to the English, but not according to the Scotch Law, devised all his real and personal estates whatsoever and wheresoever, and whether in possession or in reversion, on trust to his wife for life, with remainder to his children: Held, affirming the decision of the Master of the Rolls, that the eldest son, to whom the heritable securities passed by the Scotch Law, was not put to his election,—the will not exhibiting the least intention to give or affect any property which it was not adapted to pass.*

By his will, dated in 1821, the testator, Mr. Peter C. Maxwell, devised as follows:—"By virtue of every right, power, and authority, enabling me in this behalf, I give, devise, and bequeath unto and to the use of" the trustees therein named, "all my real and personal estates whatsoever and wheresoever, and whether in possession or reversion, upon trust" for his wife for life, with remainder to his children. The testator was a Scotchman, but was domiciled in England, and possessed heritable securities in Scotland. The will was in the English form, and executed and attested so as to pass real estate, but it was insufficient according to the Scotch Law to pass the heritable securities, which therefore descended to the eldest son. The Master of the Rolls having, on a special case, held that the son was not put to his election, this appeal was presented.

*Anderson and Fleming* in support; *R. Palmer* and *Bagshawe* for the eldest son, *contra*; *Witham* for the trustees.

The Lords Justices said, that the mere generality of the terms of a gift was not sufficient to create a ground of inference that it was meant to extend to property incapable of passing by the instrument. In the present case, the will did not exhibit the least intention to give or affect any property which it was not adapted to pass, and the heir-at-law was not therefore put to his election, and the appeal must be dismissed.

*Dec. 16.—Shrewsbury and Birmingham Railway Company v. Birmingham, Wolverhampton, and Stour Valley Railway Company and others*—Appeal dismissed, with costs.

—16.—*Little v. Newport, Abergavenny, and Hereford Railway Company*—Stand over.

—16.—*In re North of England Joint-Stock Banking Company, ex parte Bartram and another*—Appeal from Vice-Chancellor Stuart dismissed with costs.

—16.—*Clegg v. Fishwick*—Order of Master of the Rolls discharged by consent.

—16, 17.—*Jones v. Beach*—Appeal allowed from the Master of the Rolls.

*Dec. 17.—In re Lougher*—Appeal allowed from Mr. Commissioner Bere.

—17.—*Ex parte Broadhurst, in re Broadhurst*—Decision of Mr. Commissioner Daniell reversed.

—18.—*In re Pennant and Craigwen Consolidated Land Mining Company, ex parte Penn*—Order of Master and Vice-Chancellor Stuart discharged.

—20.—*In re Midland Union, Burton-upon-Trent, Ashby-de-la-Zouch, and Leicester Railway Company, ex parte Pearson's executors*—Names to be placed on list of contributories.

—20, 21.—*Foley v. Smith*—Plaintiff held to be a creditor of defendant and order as to costs.

—21.—*In re Probyn*—Order for recognizances of committee of lunatic to be vacated.

—21.—*Bowen v. Price*—Cur. ad. vult.

**Master of the Rolls.**

*Wittinshaw v. Jones.* Nov. 25, 1852.

JURISDICTION OF EQUITY IMPROVEMENT ACT.—ORDER UNDER S. 44.—DEATH OF DEFENDANT.

*Held, that the Court has not power under the 15 & 16 Vict. c. 86, s. 44, to direct a writ to be prosecuted in the absence of the defendant's legal personal representative, or to appoint a person to represent the estate.*

THIS was an application under the 15 & 16 Vict. c. 86, s. 44, for leave to prosecute this suit in the absence of the legal personal representative of the defendant, Henry Thomas Jones, or for the appointment of a person to represent the estate.

*Steele* in support.

The Master of the Rolls said, he did not think the case came within the Act, but he would consult the other Judges, and if he did not mention it again, the application must be considered to be refused.<sup>1</sup>

*James v. James.* Dec. 18, 1852.

IMPROVEMENT OF JURISDICTION OF EQUITY ACT.—SWEARING ANSWER BEFORE MASTER EXTRAORDINARY.

*The answer, which is directed by the 21st section of 15 & 16 Vict. c. 86, to be sworn before a Master Extraordinary in Chancery, held necessary to be sworn before a solicitor not concerned for the defendant.*

In this case, the defendant's answer had been sworn before a Master Extraordinary in Chancery under the 15 & 16 Vict. c. 86, s. 21.<sup>2</sup>

<sup>1</sup> The case was not again mentioned.

<sup>2</sup> Which enacts, that "the practice of the said Court, of issuing commissions to take pleas, answers, disclaimers, and examinations in causes and matters pending in the said Court shall, with respect to pleas, answers, disclaimers, and examinations taken within the jurisdiction of the Court, be, and the same is,



Mr. Berrey, the Clerk of Record and Writs, had objected to receive it upon the ground of its having been taken before the defendant's own solicitor.

Rasch now applied accordingly for the direction of the Court.

The Master of the Rolls said, that the answer should be taken before an independent solicitor.

Dec. 15.—*Congreve v. Palmer*—Cur. ad. vult.

— 15.—*Cremer v. Costerton*—Judgment for plaintiff and order for appointment of new trustees.

— 15.—*Gray v. Austin*—Judgment on construction of will.

— 16.—*Norris v. Stuart*—Stand over for trial of action at law.

— 17.—*James v. James*—Inquiry directed as to share of deceased partner and for account.

— 18.—*Walker v. Mower*—Judgment on construction of will.

— 18.—*Thomas v. Thomas*—*Cestuis que trustent* held sufficiently represented by trustees in creditors' suit.

— 20.—*Attorney-General v. Hall*—Part heard.

— 21.—*Slater v. Dodd*—Order approving of advance by trustees to husband on bond with two sureties.

— 21.—*Bailey v. Wyche*—Injunction granted on proof of service of notice of motion, but order for receiver refused.

— 21.—*Yeoman v. McGill and another*—Injunction granted on payment of money into Court.

#### Vice-Chancellor Turner.

*Pearce v. Gardner*. Dec. 20, 1852.

**SPECIFIC PERFORMANCE OF CONTRACT.—TRUSTEES FOR SALE WITHIN FIVE YEARS, WHERE PERIOD ELAPSED.**

*A testator, by his will, directed his trustees to sell, with all convenient speed and within five years from his death, his estate: Held, that this clause was directory only, and that the trustees might enforce the specific performance of a contract which had been entered into after the five years had expired.*

In this claim to enforce the specific performance of a contract entered into in July, 1852, it appeared that the plaintiffs were trustees for sale under a will, dated in 1846, of a testator, who directed them, with all convenient speed and within five years, absolutely to sell and dispose of his estate.

*Campbell and Bright*, for the plaintiffs, cited *Whitchot v. South*, 1 Chanc. Rep. temp. Car. 2, 97; *Chambers v. Howell*, 11 Beav. 6; *Cole*

hereby abolished; and any such plea, answer, disclaimer, or examination may be filed without any further or other formality than is required in the swearing and filing of an affidavit."

*v. Coles*, 6 Hare, 517; *Wright v. Mauder*, 4 Beav. 512.

*Roll and Bevir* for the defendant.

The Vice-Chancellor said, that the clause to sell within five years was directory only, and that the plaintiffs could execute the trust, notwithstanding that period had elapsed, and were therefore entitled to a decree for a specific performance.

Dec. 15.—*Home v. Brown*—Injunction dissolved.

— 15.—*In re Morley's Trust*—Vesting order under the 13 & 14 Vict. c. 60.

— 16.—*Cowman v. Harrison*—Judgment on construction of will.

— 17.—*Barham v. Earl of Clarendon*—Personal estate held liable in exoneration of realty.

— 18.—*De Balinbard v. Ballock*—On administration claim, inquiries directed as to next of kin, and for accounts to be taken at Chambers—the Judge to direct as to service of parties.

— 20.—*Harley v. Harley*—Cur. ad. vult.

— 21.—*Warwick v. Cocks*—Common order to dismiss bill by consent.

— 21.—*Ewington v. Fenn*—Application refused for direction to Master to issue his certificate under the 18th Order of April, 1850, but leave given to file supplemental claim.

— 21.—*Money Penny v. Baker*—Part heard.

#### Vice-Chancellor Kindersley.

*In re Dover and Deal Railway Company, ex parte Beardshaw*. Nov. 11, 1852.

**RAILWAY COMPANY.—ABORTIVE UNDERTAKING.—WINDING-UP ACTS.—CONTRIBUTORY.**

*A circular was sent by the directors to the allottees containing an express undertaking to return the deposits if the act were not obtained, and a further circular was afterwards sent requesting them to attend in person or by proxy a meeting for the purpose of expressing confidence in the directors, and stating that it was necessary to obtain an act in order to secure the expenses guaranteed by a rival company: Held, reversing the Master's decision, that the appellant was not liable as a contributory on the ground of having created a fresh contract by sending a proxy to the meeting.*

THIS was an appeal from the decision of the Master placing the name of Mr. Beardshaw on the list of contributories to the above company in respect of 200 shares. It appeared that a circular had been sent to the appellant with the other allottees, containing an express undertaking on behalf of the directors to return the whole of the deposits in case the act were not obtained. A second circular was afterwards sent requesting the allottees to attend personally or by proxy a meeting for the purpose of expressing confidence in the directors, and it was stated that in order to secure the expenses

guaranteed by the South Eastern Railway Company, it was necessary for the directors to obtain an act. The appellant appointed a proxy, and he had recovered at law the remainder of his deposits.

*Malins and Smale* in support; *Glasse and Martindale*, for the official manager, contra.

The Vice-Chancellor said, that there was an express agreement to return the deposits in case the act was not obtained, and the subsequent conduct of the appellant in signing the proxy did not render him liable under the circumstances stated in the circular of its being necessary to carry out an arrangement with the South Eastern Railway Company, and the appeal must therefore be allowed.

*Scorey v. Thompson.* Dec. 20, 1852.

SPECIFIC DEVISE.—CONSTRUCTION.—PROMISSORY NOTE.

*J. S. devised the income of his property and effects, which he should leave in the Cape of Good Hope, to his wife for life: Held, that the devise passed a promissory note given by a party resident there at J. S.'s death, although it was payable in London.*

THE testator, James Scorey, by a codicil to his will, dated in June, 1847, devised all the income of his property and effects, of what nature and kind soever, which he should leave in the colony of the Cape of Good Hope, to his wife for life, with remainder to his children in equal shares. It appeared the testator at his decease resided at the Cape, and a question arose, whether a promissory note as follows:—"London, Sept. 1845, 500*l.* Seven years after date I promise to pay James Scorey, Esq., or order 500*l.*, with interest from the date hereof at the rate of 4*l.* per cent. per annum, payable quarterly, the said sum to be paid before the said term of seven years, at my option. Payable at J. Boyers, St. Michael's Alley, Cornhill. Wm. Falconer,"—passed under the codicil as effects at the Cape. Mr. Falconer was also resident there.

*J. Russell and Martelli* for the widow; *Giffard* for the infant children; *Schwyn* for Mr. Falconer; *Druce* for the defendant.

The Vice-Chancellor said, that as the debtor upon the note was resident at the Cape, at the time of the testator's decease, it must be considered as property at the Cape, and therefore passed under the codicil.

Dec. 15.—*Brown v. Tuckett*—Injunction granted.

— 15, 16.—*Smith v. Swansea Dock Company*—Bill dismissed, without costs.

— 18.—*Friswell v. King*—Petition dismissed, without costs.

— 20.—*In re Bannock Iron Company*—Stand over.

— 21.—*Robinson v. Hewetson*—After a petition for payment of a legacy had been filed and stamped the petitioner married, *held* that no new stamp was required under s. 53 of the 15 & 16 Vict. c. 86.

Dec. 21.—*Sharpe v. Blondeau*—On order for leave to serve copy bill upon defendant abroad, endorsement directed to be altered to 14 instead of eight days.

— 21.—*King v. Mullins*—Motion to dissolve injunction refused, with costs.

— 21.—*White v. Cohen*—Injunction refused, with liberty to bring action.

Vice-Chancellor Stuart.

*Grote v. Byng.* Dec. 9, 1852.

APPOINTMENT OF RECEIVER.—APPLICATION FOR.—PRACTICE.

*Held, that an application for the appointment of a receiver in the first instance should be made to the Court, but where only to supply a vacancy, at Chambers.*

THIS was an application for the appointment of a receiver.

*Bagshawe* in support.

The Vice-Chancellor, in making the order, said, that where a receiver was sought to be appointed in the first instance, the motion for the purpose should be made in Court, but where only to supply a vacancy by death or otherwise, the application should be at Chambers.

Dec. 15.—*Fallows v. Lord Dillon*—Motion refused, with costs, for appointment of receiver.

— 15.—*Hestall v. Cheatle*—Leave to defendant to cross-examine plaintiff *viâ voce* before one of the examiners.

— 16.—*Gregory v. Atkinson*—Decree in administration suit.

— 18.—*Morgan v. Holford*—Judgment on special case as to construction of will.

— 17, 20.—*Colombine v. Penhall*; *Penhall v. Miller*; *Same v. Elwin*—Part heard.

— 21.—*Bryson v. Warwick and Birmingham Canal Company*—Order on defendants to produce agreement to be stamped, on payment of duty and penalty by plaintiff.

Court of Queen's Bench.

*Regina v. Judge of Dorsetshire County Court.* Nov. 23, 1852.

COUNTY COURT ACT.—PROHIBITION.—TOLLS FOR PASSING HARBOUR.—"TITLE."

*A rule for a prohibition, under sect. 58 of the 9 & 10 Vict. c. 95, was made absolute to restrain the further proceeding with a plaint to recover back the amount paid under the 32 Geo. 3, c. 74, for tolls to maintain Ramsgate Harbour, where a question was raised, whether the plaintiff's ship was liable to pay on her voyage home from Memel to Poole, as well as outwards.*

THIS was a rule nisi for a prohibition, granted on Nov. 3 last, on the defendant, under the 9 & 10 Vict. c. 95, s. 58, from proceeding with the plaint of *Adey v. The Master of the Trinity House*, which was brought to recover back the sum of 1*l.* 4*s.*, which the plaintiff had paid the

defendant for toll, under the 32 Geo. 3, c. 74, for the maintenance of Ramsgate Harbour. The question was, whether the plaintiff was liable to pay again on his return from Memel to Poole, or only once on his voyage out.

*Barstow* showed cause; *Bramwell* and *Willes* in support.

The Court said, that as the title to the toll embraced those cases in which its existence was disputed as well as the claim thereto, the rule for a prohibition must be made absolute.

### Common Pleas.

*Lambert, appellant; Overseers of New Sarum, respondents.* Nov. 12, 1852.

REGISTRATION OF VOTERS.—NOTICE OF OBJECTION.—SUFFICIENCY OF.

*A notice of objection to the name of a claimant to vote for the southern division of W., was returned in the list of objections to voters for the parish of St. T., where he resided, in the southern division of W.: Held, that the notice was sufficient under the 7 & 8 Vict. c. 18, s. 101.*

This was an appeal from the revising barrister. The appellant claimed to vote for the Southern Division of Wilts, and the notice of objection was returned in the list of objections to voters for the parish of St. Thomas (in which he resided), Salisbury, in the southern division of the county. The notice was objected as insufficient, and calculated to mislead.

*Warren, Q. C.*, in support of the appeal from the revising barrister, who had held it was sufficient, cited *Allen v. House*, 7 M. & G. 157; 8 Scott, N. R. 987; 1 Lutw. Reg. Cas. 255; *Eidsforth v. Farrer*, 4 C. B. 9; *Woollett v. Davis*, 4 C. B. 115.

The Court said, that the defect was cured by the 7 & 8 Vict. c. 18, s. 101, and dismissed the appeal with costs.

### Court of Exchequer.

*Leveroni v. Drury.* Nov. 8, 16, 1852.

LIABILITY OF SHIP-OWNERS AS COMMON CARRIERS FOR DESTRUCTION OF GOODS BY VERMIN.—BILLS OF LADING.

*Cheeses belonging to the plaintiff were destroyed by rats, on the voyage from Genoa to London, in the defendants' vessel. The bills of lading, signed by the captain, contained merely a statement that the goods had been received, and were to be delivered safely. The defendants, it appeared, kept cats and set traps to guard against the casualty: Held, that they were nevertheless liable in the absence of an express contract, as common carriers, to the loss sustained by the plaintiff.*

This was a motion for a rule nisi for a new trial or to reduce the damages in this action, which was brought to recover compensation for damages done to a quantity of Parmesan cheese, shipped on board the defendants' schooner, *Ann Sophia*, at Genoa. It appeared that the injury, as to five of the tubs, was caused by rats, and that the bills of lading, signed by the captain, merely contained a statement that the goods, description unknown, had been received, and were to be delivered safely at the port of London. The defendants resisted the claim, on the ground that all precautions had been taken by keeping cats and setting traps to guard against vermin. On the trial before *Martin, B.*, the plaintiff obtained a verdict.

*Crowder* in support of the motion.

*Cur. ad. vult.*

The Court said, that the defendants' liability as common carriers was not affected by any exceptions in the case of rats, and that as it was not imported into the contract, the defendants were bound to make the loss good, even though they had done their best to guard against it, and the rule would therefore be refused.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### POOR LAW AND MAGISTRATES' CASES.

#### CERTIORARI.

1. *Defects in rule for certiorari, not retrospective.*—Stat. 12 & 13 Vict. c. 45, s. 7, which enacts, that no objection on account of any omission or mistake in an order shall be allowed on return to a certiorari, unless specified in the rule for issuing the certiorari, does not apply where the rule for a certiorari has been made before the time fixed for the statute coming into operation. *Regina v. Inhabitants of Crownan*, 14 Q. B. 221.

2. *Ill treatment of child.*—Costs on removal by certiorari.—A child, six years old, was found wandering in the parish of S., within the union of W., in London. It appeared to be destitute, and to have been assaulted and very ill used.

It was received into the union workhouse, and there maintained, chargeable to S. On its being taken before two aldermen, they urged the guardians of the union to undertake the prosecution of the person who appeared to have ill used the child. The guardians did so: the defendant removed the case into this Court by certiorari, and was convicted.

*Held*, that the guardians were entitled to the costs of the prosecution, under stat. 5 & 6 W. & M. c. 11, s. 3, having prosecuted, as officers, on account of a fact that concerned them, as officers, to prosecute. *Regina v. Kenealy*, 15 Q. B. 1060.

Case cited in the judgment: *Regina v. Earl of Waldegrave*, 2 Q. B. 341.

#### COLLECTOR OF RATE.

*Bond for payment.*—In whose name action to

be brought.—An Act of Parliament, after appointing a number of persons guardians of the poor of a parish, and declaring that seven should be a quorum, enacted, that the guardians should sue and be sued in the name of their treasurer; and that no action that might be brought by them or any of them in the name of the treasurer, should abate, &c.

A bond for the due performance of a poor-rate collector's duties having been executed to seven of the guardians, *held* that an action upon the bond was well brought in the name of the treasurer. *Kingsford v. Dutton*, 1 L. M. & P. 479.

#### LITERARY AND SCIENTIFIC SOCIETIES.

1. *Rating*.—Poor-rate was assessed on part of a building occupied by a society, the rules of which declared, that its purposes were "the promotion of literature, science, and the arts." The Society was partly supported by annual voluntary contributions, and had obtained a certificate that it was entitled to the benefit of stat. 6 & 7 Vict. c. 36, s. 1. Objections to the claim of exemption under the Act were raised for the decision of this Court, under the following circumstances:—

1st. The building was the property of the society. The part in question was occupied by it wholly for its own purposes: the rest was let to tenants: the tenants were rated in respect of their own occupations. The rents were received by the society, and formed part of, and were applied as its general funds:

*Held*, that this fact did not affect the exemption from rates of the part occupied by the society.

2nd. The society exhibited on the premises, at intervals, works of art, which it allowed to be sold there. The society paid the carriage of such works of art as were sent to its exhibition from a distance, and on the sale of such of these as were sold received 5 per cent. on the price to defray the expense of carriage, to which purpose, however, the receipt was not adequate. Strangers were admitted to the exhibitions on payment at the door.

*Held*, that, the exhibitions appearing to be made *bond fide* with a view of promoting the fine arts, the receipt of money, as above, in the course of such exhibitions did not affect the exemption.

3rd. In the trust deed of the society was a power to use the premises "for the imparting and diffusion of education and knowledge consistent with the general purposes of the institution."

*Held*, that these words did not authorise the use of the buildings for the diffusion of education, or knowledge, except as connected with the general purposes of the institution, viz., the promotion of science, literature, and the fine arts; and therefore did not prejudice the exemption.

4th. The trust deed of the society contained a provision, that on its dissolution the property should be sold, and the proceeds divided among the then members.

*Held*, that this was no answer to the claim of exemption: the provision not appearing by the case to be a pretext for accumulation. *Regina v. Overseers of Manchester*, 16 Q. B. 449.

2. Premises, called the Portico, were held in trust for a society consisting of the subscribers for the time being, during such time as they should continue members, pay their subscriptions (2l. 10s. per annum), and conform to the rules. Their number was 400. Books and newspapers were provided out of the annual subscriptions. The portico consisted of a library of 15,000 volumes on scientific and general subjects, for reference and for circulation among the subscribers; a reading-room, containing magazines, reviews, and other periodical works; and a news-room, in which were the newspapers, gazettes, reports of the markets, notices of sales, &c.

*Held*, that the society was not exempt, by Stat. 6 & 7 Vict. c. 36, from poor-rate in respect of the premises; for that—

1st. The purposes to which they were appropriated were not exclusively purposes of science, literature, or the fine arts; and

2nd. The promotion of these was not the primary object of the society, inasmuch as the use of the premises and their contents was confined to the members themselves. *Regina v. Gaskell*, 16 Q. B. 472.

3. *Science and fine arts*.—The United Service Institution was maintained by the subscriptions of its members, chiefly naval and military men, and consisted of a museum of natural history, curiosities, and armour, a library, a lecture-room, and rooms for meetings of its members and for the transaction of business. It was established (according to the deed of trust by which its property was settled) as "a central repository for objects of professional art, science, and natural history, and for books and documents relating to those studies or of general information, and the delivery of lectures on appropriate subjects." By the rules, its members were to be,—Princes of the Blood Royal, officers of the army and navy and East India Company's service, militia and yeomanry, lords lieutenant and deputy lieutenants of counties; and persons who had retired from the above services and capacities, candidates for commissions, above a certain age and properly recommended, civil functionaries attached to the naval or military departments, and navy and army agents, were admissible by ballot. Eminent persons and benefactors of the institution, not within the above descriptions, the corps diplomatique contributing to the institution, and some other classes of persons (defined by the rules), were admissible as honorary members. Subscribers paid 1l. as an entrance fee, and 10s. yearly. Members might introduce visitors to all the rooms, except the library.

On appeal against a poor-rate assessed on the premises of the institution, and on a statement of a case for this Court showing the above facts, *held*—

1st. That the benefits of the Society were not

so limited, in respect of the persons admissible to them, as to prevent its coming within the exemption of Stat. 6 & 7 Vict. c. 36. But

2nd. That "professional art," and the other objects of the society appearing on the case, were not "purposes of science, literature, or the fine arts exclusively," within the meaning of the statute.

And that the rate was well laid. *Regina v. Cockburn*, 16 Q. B. 480.

Case cited in the judgment: *Purvis v. Traill*, 3 Exch. R. 344.

4. *Promotion of fine arts.*—A society was by its rules declared to be instituted "exclusively," for "the promotion of the science or art of music within the town of M., by the giving of concerts or other musical performances at the concert hall now belonging to the institution." The hall was occupied for the purpose of giving concerts, to which members of the society, and persons having tickets, which members had authority to give, were admitted. These concerts were much sought after; the music was of a high order; and the art of music was promoted in consequence in M. All the formal requisites to bring a society within Stat. 6 & 7 Vict. c. 36, s. 1, had been complied with. The society were rated in respect of their occupation. On one occasion, before the time of the rate, the Society had granted the use of the hall gratuitously for a concert, the proceeds of which were given to a charity. The Sessions, on appeal, confirmed the rate, subject to a case.

*Held*, that the casual use of the concert hall in one instance for a purpose of charity before the rate did not affect the claim to exemption. But, *held*, that the society, though instituted for the purpose of promoting the fine arts, and producing that effect, was not exempt, since it appeared that the promotion of the fine arts was not the primary object of the society, but only incidental, the primary object being the gratification of the subscribers. *Regina v. Brandt*, 16 Q. B. 462.

#### LUNATIC PAUPER.

*Removal.*—*Second order adjudging settlement.*—*Service of copy order, &c.*—Two justices, by order under Stat. 1 & 2 Vict. c. 14, s. 2, removed a dangerous lunatic to the county asylum, making no order for the payment of expenses. Afterwards, the same two justices, by a second order, reciting the first, and stating (as was also proved in fact) that at the time of the removal no inquiry had been made into the settlement of the lunatic, and that he had no means of providing for his own maintenance, adjudicated that his settlement was in S., and ordered S. to pay the expenses: *Held*, that the 2nd order was good.

*Held*, also, that, on appeal against the second order (making the clerk of the peace of the county respondent under sect. 2), it was not a valid objection that the copy of the order, notice of chargeability, examinations, ground of adjudication, and particulars of settlement, had been served on S. by the treasurer of the

lunatic asylum and by no other party. *Regina v. Easley*, 15 Q. B. 1025.

#### MAGISTRATE'S ORDER.

1. *Without proper statement as to place of making, indorsed on an order which has such statement.*—Justices, by a regular order, having the county as venue, removed a pauper to his settlement; and they, at the same time, by indorsement on the order of removal, suspended the execution on account of his illness. Afterwards one of the same justices and another justice, by order indorsed on the last order, directed a removal; and by a contemporaneous order, similarly indorsed, they directed payment of expenses. The last two orders did not, either by venue in the margin or statement in the body, show that they were made in the county.

*Held*, that they were bad for this fault; and they were quashed on *certiorari*. *Regina v. Inhabitants of Croxan*, 14 Q. B. 221.

2. *Right to begin and of reply on argument of case stated under 12 & 13 Vict. c. 45, s. 11.*—Where a case is stated for the Court under Stat. 12 & 13 Vict. c. 45, s. 11, and argued on concilium, the counsel supporting the order of the magistrates is entitled to begin and reply. *Regina v. Overseers of Holbeck*, 16 Q. B. 404.

#### MAGISTRATES' REFUSAL.

11 & 12 Vict. c. 44, s. 5.—*Remedy.*—*Refusal to act in duties of office.*—The remedy by rule under 11 & 12 Vict. c. 44, s. 5, is not simply for the benefit of justices, and confined to cases in which their jurisdiction is doubtful, but extends to all cases in which they refuse to do an act relating to the duties of their office. *Regina v. Aston*, 1 L. M. & P. 491.

#### MAINTENANCE IN BASTARDY.

*When a former application has been dismissed.*—*Mandamus.*—Under Stat. 7 & 8 Vict. c. 101, s. 2, a refusal by justices to make an order for maintenance of a bastard, though on the merits, is no bar to a second application. And, if justices refuse to entertain such second application on the mere ground of the first refusal, the Court will order them by mandamus to hear it.

The justices, on a second hearing, may, nevertheless, take into consideration, with a view to forming their decision, the fact and circumstances of the former hearing. *Regina v. Machen*, 14 Q. B. 74.

#### RATE.

*Time for prosecuting appeal at special sessions.*—The appeal to special sessions against a poor-rate, given by Stat. 6 & 7 Wm. 4, c. 96, s. 6, must be prosecuted within the same time as the appeal to general or quarter sessions, under Stat. 17 Geo. 2, c. 38, s. 4; that is, at the first practicable session. *Regina v. Trafford*, 15 Q. B. 200.

#### RATE ON BRIDGE.

*Lying in two parishes, and approached by roads of unequal length.*—A company were authorised to build a bridge across a river,

which separated the parishes *H.* and *B.* and to take tolls for passing the bridge, which, by the act, was to be considered as situate half in *H.* and half in *B.* They were also empowered to make roads and approaches to the bridge, on each side of the river, and to take toll for the roads, separately, or jointly with the tolls for the bridge. They did make the roads; and these roads formed the only approaches to the bridge, and were of unequal length in the two parishes. The company erected a toll-gate in *H.*, and there took toll.

*Held* (without any decision on the rateability in respect of the roads), that, in respect of the bridge and its appurtenances, the company were to be assessed on an equal sum in the two parishes upon the profit of the whole bridge, after proper deductions, the amount of which, including the cost of maintaining the roads, the sessions found as a fact. *Regina v. Hamersmith Bridge Company*, 15 Q. B. 369.

Case cited in the judgment: *Regina v. Mile End Old Town*, 10 Q. B. 208.

#### RATE ON PUBLIC BUILDINGS.

1. *Exemption of property devoted to public purposes.*—To exempt property from poor-rate as being devoted to public purposes, it is not sufficient that it produces no benefit to the occupiers individually, and that the occupation is in some degree beneficial to the whole public, yielding additional benefit also to a limited district or community: the benefit must be exclusively public. *Regina v. Harrogate Commissioners*, 15 Q. B. 1012.

2. *Liability of public pump-room.*—Profit not exclusively appropriated to public purposes.—An Act, 4 & 5 Vict. c. xvi., “for improving certain parts of the Townships of” “High and Low Harrogate,” and for protecting the mineral springs there, &c., recited that many visitors resorted to those places, and that “it would be of great advantage to the inhabitants,” “and to the public at large,” if provisions were made as after-mentioned. By subsequent clauses, commissioners were appointed for carrying the act into effect within defined boundaries, comprehending parts only of several townships: the mineral springs were vested in the commissioners, for the purpose of regulation and protection; and they were empowered to extend and alter the buildings over the springs; to lock up the springs, giving the public free access between certain hours; to build a pump-room, and to make a limited charge on persons frequenting the said room and buildings; to flag and repair footways in all streets within the limits; to make and repair sewers under the streets; to widen and improve, light and cleanse them, to regulate the buildings therein, and to abate nuisances; and they were authorised to cause the dirt, ashes, and rubbish, except such as occupiers should reserve for their own use, to be removed from any house within the limits, at such time and manner as they, the commissioners, should appoint. They were further empowered to erect a market for the sale of provisions, to set up weighing machines,

license and regulate hackney coaches, appoint constables, &c. And they were enabled, for the purposes of the Act, to lay rates on the occupiers of lands, houses, &c., within their district.

The commissioners carried these provisions into effect, and built a pump-room, which yielded them a profit, the whole of which was applied to the purposes specified in the Act, and to no others.

*Held*, that the commissioners were rateable to the poor-rate of the township in which the pump-room was situate, as beneficial occupiers of the room, the profits not being exclusively appropriated by the Act to public purposes. *Regina v. Harrogate Commissioners*, 15 Q. B. 1012.

Case cited in the judgment: *Regina v. Badcock* 6 Q. B. 800.

And see *Literary and Scientific Societies*.

#### RATING RAILWAYS.

1. *Where working expenses increase after accounts made up.*—By a railway act the company were bound to make up accounts of receipts and expenses every 30th June and 31st December, and lay them before the proprietors; and separate accounts of rates and tolls, for cases where the company were and were not carriers, were to be kept, which might be inspected by the officers of the parishes through which the line passed. The company made up accounts to 30th June. In the November of the first year a poor-rate was laid. Between those days the working expenses increased: *Held*, that the parish officers, having ascertained this fact, ought to take it into consideration in making the assessments, and that the company were not precluded from insisting upon it, either by the above provisions or by sect. 107 of *The Railway Clauses' Consolidation Act*, 1845 (8 & 9 Vict. c. 20). *Regina v. London Brighton and South Coast Railway Company*, 15 Q. B. 313, 358.

2. *Where two railways use portion of each other's line.*—By a statute, local and personal, public, it was enacted, that each of two railway companies, *L.* and *S.*, should have the free use of a given portion of the other's line. The portions of the respective lines lay in different parishes: *Held*, that each company was to be rated for the value of the given portion of its own line, at the amount which the other would have had to pay if it had hired the right of using such portion, and that no deduction was to be made for a supposed rent paid for the corresponding easement on the other's line. *Regina v. London, Brighton, and South Coast Railway Company*, 15 Q. B. 313, 358; *Same v. South Eastern Railway Company*, 344, 358.

3. *Allowance for annual depreciation of permanent way.*—A deduction from the gross profits ought to be allowed in respect of the average annual depreciation of the permanent way, though no sum is annually set apart for the purpose of repairing it. *Regina v. London, Brighton, and South Coast Railway Company*, 15 Q. B. 313, 358; *Same v. South Eastern Rail-*

way Company, 344, 358; *Same v. Midland Railway Company*, 353, 358.

4. *Mileage or parochial system of assessment.*—Where a railway passes through several parishes, the poor-rate to be imposed in respect of it, in any one parish, ought, under Stats. 43 Eliz. c. 2, s. 1, and 6 & 7 Wm. 4, c. 96, s. 1, to be calculated on the parochial principle; that is, on the gross profits earned by so much of the railway as lies within the parish, deducting therefrom the expense incurred in respect of that portion of the railway, when such profits and deductions can be ascertained; and not on the mileage principle,—that is, by deducting the expense of the whole line from the gross profits of the whole line, and assessing at a sum bearing the same proportion to the remainder, so ascertained, as the length of the railway within the parish does to the length of the whole line. *Regina v. London, Brighton, and South Coast Railway Company*, 15 Q. B. 313, 358; *Same v. South Eastern Railway Company*, 344, 358; *Same v. Midland Railway Company*, 343, 358.

Case cited in the judgment: *Rex v. Kingswinford*, 7 B. & C. 236.

5. *Branch.—Principle of assessment.—Allowances.*—The Great Western Railway Company were assessed to the poor for 2½ miles of their line, situate in the parish of T., being part of a branch of the Great Western Railway, purchased by the company from certain projectors, and incorporated with the company's line by Act of Parliament.

This branch (from Reading to Hungerford) was worked by the company as part of their general line; but a certain number of engines and carriages, and a certain number of officers and servants, were appropriated to it. It might have been worked as an independent railway, but would then have required more stock and expenditure. No separate account of receipts and expenditure in respect of the branch was kept. The expenses were not in the proportion of the actual gross receipts on any part of the line; nor were the gross receipts or the expenses uniform throughout the line. The company's profits arose wholly from carriage; and no engines or carriages but theirs used the line.

The respondents took as the ground of assessment the rent at which the entire Great Western railway and branches, with its appurtenances, including stations, might be expected to let from year to year on the terms of the Parochial Assessment Act, 6 & 7 W. 4, c. 96. This rent they ascertained by taking the whole actual receipts for the trunk and branches for a year, and deducting the annual expenditure, classified under the heads, principally, of maintenance of way, stations and works, locomotive account, carrying account, and general charges; and from the balance, they made a further deduction for interest on capital invested in moveable stock, and for tenant's profits, including profits of trade: they also deducted the annual value of the stations, which were rated apart from the line of railway. The

rateable value being thus settled, they ascertained the gross actual yearly receipts on each mile and portion of a mile in parish T., and assessed the appellants in respect of the 2½ miles within T. in the ratio which those yearly receipts bore to the gross actual yearly receipts on the whole line and branches, calculating the rateable value per mile in T. in the same proportion to the whole rateable value (excluding stations) as the gross receipts in T. bore to the total gross receipts.

The appellants contended that, assuming the rateable value of the whole railway to be the right basis for each parish, and to be rightly ascertained, it ought to be distributed along the line, and apportioned, on each part, in the ratio of the net earnings or net profits accruing in that part, and not in the ratio of the gross receipts. They estimated the rateable value by taking the gross annual receipts per mile, as calculated by the respondents, and deducting the actual expenses of each mile. These they ascertained, for the present purpose, by computing the actual expenses incurred on the branch alone (such as maintenance of way, &c.: salaries of servants, &c., on the branch: lighting and offices' expenses on the branch: annual repair of carriages used on the branch: cost of running engines on the branch: rates and taxes: government duty: annual rateable value of stations on the branch: &c.), and dividing them, where they were common to the whole branch, by the number of miles, and taking the result as the expense per mile. A small part of the general expenses of the entire railway (central superintendence, printing and advertising) was apportioned on the branch in the ratio of the traffic upon it, and such portion then subdivided as before, on the mileage principle. The appellants also made a deduction for interest on capital, and tenant's profits, including those of trade, being a per centage on the capital necessarily invested in the moveable stock employed on the branch; and this deduction also they distributed over the branch by a mileage proportion. If these deductions were allowed, they exceeded the receipts, and the branch was not, in itself, profitable, nor would the occupation of it, alone, by a tenant, be beneficial; but it was profitable to the company as proprietors of the railway generally, by bringing traffic to the main line.

Quære, whether the appellants or the respondents, if either, had laid down principles of assessment which the Court could, in the present state of the law, declare to be correct. *Regina v. Great Western Railway Company*, 15 Q. B. 379.

6. *General principles as to parochial earnings and deductions.*—A railway company, in the estimate of the deductions to be allowed from its gross profits for the purpose of ascertaining the rateable value, is entitled to an allowance for the ultimate fundamental renewal and reproduction of the rails, framework, and moveable stock. It is not enough to allow for mere annual repairs.

The rateable value of the railway in any

parish is the net value arising from deducting the expenses accruing in respect of so much of the railway as lies in that parish from the gross receipts accruing in respect of the same portion of the line. Where expenses are incurred, necessary for keeping the part in the particular parish at its value, they may be assigned to the parish, wherever they are locally arising. Where expenses apply equally to every part of the line, there may be applied to the parish a part of them bearing the same ratio to the whole as the length of the line in the parish bears to the length of the whole line. But if a branch of the line, comprehending several parishes, be incorporated into the whole line, and worked as an undistinguished part, the above principle of proportion must be applied, not exclusively to the branch, but to the whole line.

Where the gross receipts and the expenditure are not at an uniform rate throughout the line, nor in an uniform ratio to each other, it is a faulty mode of estimating the rateable value in a parish, to deduct the expenditure on the whole line from the gross receipts on the whole line, and then take, for the rateable value in the parish, a part of the whole resulting difference bearing to that whole difference the same ratio which the length of the line in the parish bears to the length of the whole line. *Regina v. Great Western Railway Company*, 15 Q. B. 1085.

#### REMOVAL.

1. *Children of Irish parents*.—The children, born in England, of an Irish father and an Irish mother became chargeable, while under the age of 16, after the father had deserted them and the mother had died,

*Held*, that they were removable to the parish of their birth, notwithstanding Stat. 8 & 9 Vict. c. 117, s. 2; that enactment not making English born children removable directly, but only as part of the family of a parent who is removed. *Regina v. Inhabitants of all Saints, Derby*, 14 Q. B. 207.

Cases cited in the judgment: *Regina v. Preston*, 12 A. & E. 822; *Regina v. Wendron*, 7 A. & E. 819; *Rex v. Cottingham*, 7 B. & C. 615.

2. *Costs of maintenance*.—*Final adjudication of settlement*.—*Illegal removal*.—In April, 1843, an order was made for removal of a pauper from parish B. to parish C., and was suspended the same day; and C. was served with notice of the order of removal within 10 days. On 26th August, 1846, Stat. 9 & 10 Vict. c. 66, came into operation. In September, 1847, execution of the order was directed by another order of justices; and, at the same time, they ordered payment, by C. to B., of the expenses of maintenance from April, 1843, to September, 1847; and the pauper was removed to C. He had resided in B. five years next before the execution of the order. Afterwards C. appealed against both orders. The sessions confirmed both. On cases reserved for this Court, the order of removal was confirmed on the ground that the appeal was too late; but

the order for payment was quashed, on the ground that the case was not within Stat. 35 Geo. 3, c. 101, s. 2, the pauper not being dead, nor, in consequence of Stat. 9 & 10 Vict. c. 66, s. 1, legally removed.

*Held*, nevertheless (on motion under Stat. 11 & 12 Vict. c. 44, s. 5), that, after the decision of this Court, B. was entitled to an order on C. for the same expenses of maintenance, the settlement having now been finally adjudged to be in C., so as to bring the case within Stat. 4 & 5 Wm. 4, c. 76, s. 84. *Regina v. Wodehouse*, 15 Q. B. 1037.

3. *Order by county justices*.—*Notice of appeal*.—Two justices in and for a county, removed a pauper from a township in the borough of L. in that county, to a parish. The overseers of the parish, within 21 days after notice of the order, gave notice of appeal to the next quarter sessions for the county. They appealed to the borough sessions of L., but did not, within 21 days, give any further notice of appeal; and their appeal was dismissed for want of notice of appeal to the borough sessions.

*Held*, 1st. That no appeal lay to the county sessions, that the order appealed against was made by justices for the county, who had, within the borough, concurrent jurisdiction with the borough justices.

2nd. That the notice given was a sufficient notice of appeal, within Stat. 11 & 12 Vict. c. 31, s. 9, the erroneous statement that the appeal would be made to the county sessions being merely surplussage.

Rule absolute for a mandamus to hear the appeal. *Regina v. Recorder of Liverpool*, 15 Q. B. 1070.

4. *Widow under Stat. 9 & 10 Vict. c. 66*.—*Break of residence*.—A woman resided with her husband in parish M. for upwards of five years; he obtained work in another parish, R., and for some weeks generally slept in R., but had his family at his home in M. He died at R. At the time of his death, the widow was with her infant family at B., on a visit to her mother there, but with an *animus revertendi* to M. She returned to M., and there applied for relief. The parish officer told her that B. was her parish, and sent her to the railway in the parish cart, in company with a person who paid her fare and saw her off to B. She remained in B. some months, and then returned to M., from which she and her family were then removed by order of two justices to B. within the first year of her widowhood.

On appeal, the quarter sessions quashed the order, subject to a case stating the above facts.

*Held*, That the residence at the time of the death of the pauper's husband was in M.; that, if the officer of M. paid the pauper's fare, and assisted her in removing to B., with intent to cause her to be chargeable to B., such removal was illegal under Stat. 9 & 10 Vict. c. 66, s. 6, and her residence in B. subsequent to it would not break her residence in M.; if he had not that intent, her residence in B. would be a



break, and render her removeable from *M.* within 12 months after her husband's death. But the Court refused to draw any inference as to the intent with which the officer acted ; and they sent back the case to be re-stated on that point. *Regina v. Inhabitants of St. Marylebone*, 16 Q. B. 299.

5. *Maiden settlement on desertion by husband.*—The wife of a seaman, who had no settlement, became chargeable during her husband's absence on one of his ordinary voyages to Calcutta : *Held*,

That the husband's absence, under these circumstances, was, for the purposes of the wife's removability, equivalent to desertion, and that an order for her removal to her maiden settlement was good.

Although he had partially provided for her maintenance during his absence, and returned to her at the end of the voyage, as he had done after previous voyages, resuming his residence with her in the removing parish. *Regina v. Inhabitants of St. Marylebone*, 16 Q. B. 352.

Case cited in the judgment : *Rex v. Cottenham* 7 B. & C. 615.

#### RESIDENCE.

1. *Imprisonment for not paying fine.*—Under Stat. 9 & 10 Vict. c. 66, s. 1, an imprisonment out of the parish, in default of paying a fine, upon a summary conviction, does not break the residence in the parish ; and, if there be on the whole a five years' residence, without reckoning the time of imprisonment, and the residence be continuous with the exception of that time, the resident is irremovable. *Regina v. Overseers of Holbeck*, 16 Q. B. 404.

2. *How reckoned, for the purpose of settlement by estate.*—If a person having a sufficient estate within a parish, is actually resident on it, he is settled in that parish, provided he has resided there in all 40 days, though they are not continuous, and he has been in the interval settled elsewhere. *Regina v. Inhabitants of Knaresborough*, 16 Q. B. 446.

#### SETTLEMENT.

*By estate.*—*Building society.*—A building club was formed by subscribers to an indenture which recited the purpose to be raising a capital stock for erecting dwelling-houses ; and they agreed to articles, which provided :—That every subscriber should pay 6s. 8d. monthly ; freehold land was to be purchased by the club for erecting houses ; each member to take as many houses as he should have shares ; the houses to be built according to a plan annexed, and under the inspection of the agents of the Society ; the order in which the members should take the houses to be determined by lot, till all the shares should be drawn ; no member to mortgage his house till the conclusion of the society, but each to pay rent to the officers, which was to be deemed a vesting of property in them ; no subscriber to have power to let or sell his house till security should be given to the satisfaction of the president ; the monthly payments and rents to be placed to

the funds of the society till the whole subscriptions should be completed and all the dwelling-houses be allotted, and possession of them given to the respective subscribers ; the president meanwhile to have the power of distraining for the rent ; if a member, after being put in possession of a house, should lock his door, quit the neighbourhood for six months, and neglect to pay his monthly payments and rents, the president and steward might take possession of the house and let or sell it ; at the determination of the Society, each member was to be fully entitled to his share, and a conveyance thereof at his own expense ; the surplus stock to be divided ; and meanwhile each member to pay 1l. yearly, and to forfeit his share upon making default of any of the payments provided for ; the society not to be broken up while six members existed, or before all the buildings should be completed.

The club contracted for the purchase of land, and commenced building without any conveyance being made to them. The land was afterwards, by deed to which the club was party, mortgaged to *A.*, for money advanced to the club. The whole purchase-money paid by the club amounted to 30l., but not to so much as 30l. for each subscriber. In 1824 and 1825, *E.*, a member of the club, drew his share, had a house built for him, and entered into possession ; and he paid rent until the mortgage was paid off, when the mortgagee conveyed the house to *E.* and the other members, severally. The club had shortly before ended, the shares having been paid up and the houses built. At the time when the club ended, *E.*'s monthly and annual payments, exclusive of rent, exceeded 30l. ; but such payments made before he came into possession did not amount to 30l. The house was not of the annual value of 10l.

*Held*, that *E.* acquired a settlement by residence in the house after the conveyance to him, not having had any legal or equitable estate until the time of such conveyance, and having before that time paid more than 30l., so as to satisfy Stat. 9 Geo. 1, c. 7, s. 5. *Regina v. Inhabitants of Carlton*, 14 Q. B. 110.

Cases cited in the judgment : *Rex v. Woolpit*, 4 Dowl. & R. 456 ; *Rex v. Geddington*, 2 B. & C. 229 ; *Rex v. Lady Beannington*, 6 M. & S. 403.

2. *Payment of rates under local act.*—Stat. 35 G. 3, c. 73, renders the incoming and the outgoing tenant of premises in the parish of St. Marylebone liable respectively to the payment of the rates of the parish in proportion to the times of their occupation respectively.

*A.* occupied a house in St. Marylebone for the latter part of a year, in respect of which the outgoing tenant was rated ; and *A.* paid the portion of the rate in respect of the time during which he occupied, but was not entered on the rate-book as occupier for any part of that time.

*Held*, that he acquired a settlement under Stat. 3 W. & M. c. 11, s. 6. *Regina v. Inhabitants of St. Marylebone*, 15 Q. B. 399.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 1, 1853.  
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## CHANGE OF MINISTRY.

### THE NEW LAW APPOINTMENTS.

It is now definitively settled that Lord Cranworth has the Seals, and that Sir A. J. E. Cockburn, who resigned the office of Attorney-General upon the dissolution of Lord John Russell's Ministry, in Hilary Vacation, 1852, has been re-appointed to the same office under Lord Aberdeen's government. Mr. Bethell is the new Solicitor-General.

Some surprise and disappointment, we understand, has been felt by a large section of the Legal Profession, that Lord Truro has not been reinstated in the office of Lord Chancellor; but it must be remembered that, great as were his Lordship's claims on the grounds of experience, learning, industry, and political consistency, Lord Truro had no official connexion with the head of the present administration, and is not desirous of again undertaking the labour and anxiety which the office of Chancellor imposes upon any one determining conscientiously to discharge its duties, unless compelled to do so by an overwhelming sense of public duty.

It is probably superfluous to inform our readers that the paragraphs which appeared in some contemporary publications, first announcing that Lord St. Leonards was to continue to hold the seals, notwithstanding the dissolution of Earl Derby's ministry, and then that his Lordship had declined the offer, were equally unfounded. Lord Aberdeen, we doubt not, participated in the public homage paid to the late Chancellor by the prevalence of the desire that he should retain office, but he appreciated too accurately the honour and character of Lord St. Leonards to suppose he could entertain a proposition to sit in a Cabinet which

assumed the reins of government in direct hostility, and after a successful opposition to, Lord Derby's government. The notion probably originated in some mind unconscious of the indelicacy involved in the suggestion, and our readers will be consoled by the assurance that no such insult was offered to the head of the Legal Profession.

The new Chancellor's fitness and capacity to discharge the judicial duties that devolve upon him seem to be very generally acknowledged. The facility displayed by him, upon his elevation to the Bench of the Court of Exchequer, in mastering all the details of Common Law practice, with which he was previously unacquainted, and the clearness, accuracy, and comprehension, his decisions as a Common Law Judge<sup>1</sup> uniformly exhibited, naturally recommended him for a more prominent judicial office. His career as Vice-Chancellor was too limited in its duration to afford many striking opportunities for the exercise of the highest judicial qualities, but since his appointment to the office of Lord Justice, in conjunction with Sir J. L. Knight Bruce, under the Act 14 & 15 Vict., c. 83, Lord Cranworth has afforded ample evidence that he possesses many of the qualifications necessary to constitute an eminent Equity Judge.

As already observed, in the present unsettled state of the law, and of the practice of the Superior Courts, both of Law and Equity, the administrative talents of the individual holding the Great Seal are of scarcely less importance than his judicial

<sup>1</sup> Many of our readers will no doubt recollect that the present Chancellor, when Baron Rolfe, presided at one of the most remarkable modern criminal trials, that of the murderer Rush, and that the judgment, temper, and firmness then exhibited, were the topics of universal panegyric.

capacity. Whether in this extensive, and as yet, by him, untried field, Lord Cranworth will prove himself equal to the exigencies and imperative demands of his position, is more than those who are not intimately acquainted with his Lordship can venture confidently to predict. The occasion is well calculated to call forth, as it will undoubtedly require, the exercise of extraordinary energy and ability, and the sphere of public usefulness opening to any individual endowed with these rare attributes, and placed at the head of the administration of the law, renders that elevation worthy of the loftiest ambition.

Without anticipating that Lord Cranworth will in any respect disappoint the wishes of his friends and the just expectations of the public, we may be permitted to remind those inclined to judge too hastily of the acts and the supposed short-comings of persons in authority, that the individual who presides in the Court of Chancery has at this moment formidable and peculiar difficulties to encounter, which will not be diminished by contrasting him with the very remarkable man he has succeeded.

The selection of Sir George Turner to fill the important office of second Judge of the High Court of Appeal, vacated by the promotion of Lord Cranworth, appears to have afforded very general satisfaction. Sir W. Page Wood has been appointed to the vacant Vice-Chancellorship, an office which, we collect from the learned Judge's valedictory address to his constituents at Oxford, he had been offered and declined to accept whilst filling the office of Solicitor-General under Lord John Russell's Government.

The Hon. C. P. Villiers succeeds Sir George Bankes as Judge-Advocate General, which completes the list of the English Law Appointments, so far as they have yet been announced.

### NEW RULES AND ORDERS IN BANKRUPTCY.

As already stated (p. 75), the New Rules and Orders in Bankruptcy, approved by Lord St. Leonards as Chancellor, are to take effect from the 11th instant. It may be convenient, therefore, without further delay, to put our readers in possession of a concise analysis of the subject-matter of such of the Rules as are new either in form or substance.

After declaring, by Rule 1, that the language of the Rules and Orders shall be con-

strued in conformity with the interpretation clause (s. 276) of the Bankrupt Law Consolidation Act, the regulations relating to the "petition for adjudication of bankruptcy," proceed in the following order:—

2. Petition for adjudication of bankruptcy to be on parchment. No alterations, interlineations, or erasures without leave of the Court, except such as are necessary in order to adapt the printed form to the circumstances of the case.

3. Petition and affidavits in support thereof to be examined by the Chief Registrar in London or Registrar in the country, and rejected if not in conformity with the Act and Rules, subject to an appeal to the Commissioner of the day in town, or Commissioner in attendance in the country.

4. Search to be made for previous fiat or petition against same person, and result to be indorsed.

5. When two or more petitions presented at the same time, priority to be determined by lot. No second petition to be proceeded with until after the dismissal of the first, or the expiration of the time allowed for its prosecution.

6. Second petition for adjudication, by creditor neglecting to prosecute first petition, not to be presented without special leave of the Court.

7. Allotment of petitions for adjudication to several Commissioners by ballot in presence of Commissioner.

8. If Commissioner absent Registrar may ballot.

Second or subsequent petition for adjudication to be presented before the same Commissioner.

10. If question arises upon allotment, to be referred to senior Commissioner.

11. Petitioning creditor's debt to be investigated previous to adjudication, and debtor and creditor account filed.

12. Personal attendance of petitioning creditor and witnesses to prove trading and act of bankruptcy may be dispensed with on special cause proved.

13. Except in cases of emergency, applications for adjudication to be made to the Commissioner of the day in his private room, previous to the public sitting of the Court.

#### *Disputing Adjudication of Bankruptcy.*

14. Notice to dispute adjudication, under 12 & 13 Vict., c. 106, sec. 104, to be served upon petitioning creditor or his solicitor, and upon Registrar, two clear days before the day for showing cause; the notice to state whether the petitioning creditor's debt, the trading, or the act of bankruptcy, is disputed.

15. After service of such notice, person disputing to be furnished with names of witnesses deposing to matter in dispute, and copy of depositions upon payment.

16. On showing cause, such matters as the person adjudged bankrupt gave notice to dis-

pute shall again be proved *vidæ voce*, and if new evidence be given, or witness not present for cross-examination, the Court may grant further time to show cause.

The following Rule relating to the mode of application to the Court, under sect. 12 of the Bankrupt Law Consolidation Act, is so important in practice, and withal so obscurely framed, that we subjoin it without abridgement :—

*Jurisdiction of the Court.*

17. That (unless the Court shall in any particular case otherwise direct) all applications to the Court in the exercise of its primary jurisdiction, by virtue of the Bankrupt Law Consolidation Act of 1849, shall be by way of motion, supported by affidavit, upon hearing which the Court shall make such order therein as shall be just; but in cases in which any other party or parties than the applicant are to be affected by such order, no such order shall be made unless upon the consent of such person or persons, duly shown to the Court, or upon proof that notice of the intended motion, and copy of the affidavit in support thereof, has been served upon the party or parties to be affected thereby, four clear days at least before the day named in such notice as the day when the motion is to be made: provided, however, that the Court may, if it shall think fit, in any case where the party or parties to be affected by the order, or any of them, shall not have been duly served with a notice of the motion for such order, make an order calling upon the party or parties to be affected thereby to show cause, at a day to be named by the Court in such order, why such order should not be made.

18. Every order to show cause to be served upon the party to be affected thereby four clear days before the day appointed for showing cause.

19. No warrant for commitment for disobedience of any rule or order to be without two clear days' notice, and personal service, unless Court is satisfied that person to be committed cannot be personally served, upon which substituted service may be directed.

20. Personal service to be effected by serving duplicate copy of notice of motion and a true copy of rule or order, and showing original.

21. Petitions to be signed by petitioners, except in cases of partnership, or absence from the United Kingdom. The signature of one of several partners sufficient, and of a person on behalf of one who is absent. All signatures to petitions to be attested by solicitor of party signing in the matter of the petition.

22. Petitions to be entered with Registrar, and order directing attendance signed by him. Petition, when served, to be returned to Registrar, before hearing, and filed.

23. All affidavits to be used to be filed with Registrar two clear days before day of hearing; and no affidavit in reply, or rejoinder, to be filed except by leave.

24. Registrar to indorse the day and year when left for filing, and to file the same, with proceedings.

25. No affidavit to be filed unless intituled in the Court and matter, and when left to be filed, not to be delivered to any person without order of Court.

26. Except in cases of emergency, motions to be made to the Commissioner acting in the particular bankruptcy, when he sits, as Commissioner of the day, and in order set down in Registrar's Diary.

27. Motions made by the Bar to be heard according to precedence, and motions made by attorneys in the order set down in the Registrar's Diary, before the sitting of the Court.

28. Notice of motion to be delivered to Registrar previous to sitting of the Court, specifying the name of the cause and party, the name of the attorney and of counsel (if the same is to be made by counsel), and the name of the party, and his attorney, on whom notice of motion has been served.

The Rules for the removal and transfer of commissions and fiats issued before the 11th November, 1842, and the allotment thereof amongst the existing Commissioners, differ but little from those already in force, and are not likely to come so frequently into operation as to justify their transfer to our pages. The following Orders "with respect to the Chief and other Registrars," are deserving of professional attention :—

33.<sup>1</sup> The Chief Registrar's office to be open daily, from ten to four o'clock, except upon the Court Holidays.

34. Petitions, affidavits, and other documents, directed to be filed, except the affidavits mentioned in Rule 23, are to be filed with the Chief Registrar in London, or the District Registrar in the country.

35. The Chief Registrar to keep a roll of all attorneys and solicitors entitled to practice in Bankruptcy.

36. Book for names and places of abode or residence of enrolled attorneys and solicitors, where they may be served with notices, &c., to be kept at Chief Registrar's office. If entry not made in book, notice to be stuck up in Chief Registrar's office.

37. Like book in District Courts in the country.

38. Substituted place for serving notices, &c., when attorney's or solicitor's place of abode or business is not within five miles from the General Post Office, or within three miles of District Court.

39. All existing commissions and fiats, when transferred, to be entered in books.

40. Transmission of minutes of proceedings from the country districts to the Chief Registrar.

<sup>1</sup> Rules 29 and 30, relating to deposit of costs on appeal, and the allowance of amendments, are printed *ante* pp. 75 and 76.

*Of the Proceedings.*

41. All proceedings in Court to be on parchment or paper of uniform size.

42. Proceedings to remain of record in the Court, and not to be removed except by special order.

43. Registrar to attend in each Court and take minutes.

44. Except on emergency, no Registrar to sit for Commissioner without an express request in writing.

45. Memorandum of advertisement in *Gazette* to be made by Registrar, in lieu of annexing copy of *Gazette*.

*Office Copies of Proceedings.*

46. Office copies of all proceedings provided for any bankrupt, creditor, or arranging debtor, to be paid for at the rate directed by the 53rd Sect. (three halfpence per folio of 90 words.)

47. Office copies to be made by Chief Registrar, Registrar, Messenger, or Usher, as Court shall appoint, and delivered without delay, and in the order bespoken.

*Duties of the Master.*

48. All bills of costs in matters of bankruptcy in London to be taxed by the Master, to whom taxable bills may be referred by any District Court.

49. Master's office to be open from ten until four o'clock, except during such periods as the Accountant's office is closed by order of the Lord Chancellor.

50. Business of the Master to be transacted in person.

51. Copies of bills of costs lodged in the Master's office to be examined and delivered out by clerk as heretofore.

52. In country districts, bills of costs, except specially referred to Master, to be taxed by one of the Registrars.

*Proof of Debts.*

53. Every dividend sitting to be a sitting for proof of debts.

54. Separate debts may be proved under joint petition, and distinct accounts to be kept of joint and separate estate. Application thereof in case of overplus.

[To be continued.]

## NOTICES OF NEW BOOKS.

*The New Chancery Acts* (15 & 16 Vict. cc. 80, 86, 87), and *the General Orders, with Notes, and Index, and references to Daniels' Practice; to which is added an Appendix of Forms.* By THOMAS EMERSON HEADLAM, Esq., M. P., one of her Majesty's Counsel. London: Stevens & Norton, 1853.

THE eminent position of Mr. Headlam entitles his work on the New Chancery Acts to an early notice in our pages, and

his opinions on the recent changes in Equity Jurisdiction and Practice deserve the most respectful consideration.

Mr. Headlam justly observes, that—

"In the great revolution which has occurred during the last few years in the system by which justice is administered in Equity, there is one alteration little observed or thought of by the public, but of essential consequence to any person on whom is imposed the duty of writing concerning the practice of the Courts; namely, the change in the sources from whence information on the subject is now to be obtained. When the original work to which this publication refers was first offered to the Profession, the practice of the Court of Chancery was a mystery known to few, and only to be acquired by a diligent comparison of reported cases, and by personal information from the officers of the different departments. At the present time, all the material rules by which the practice is governed, are contained in a few Statutes and General Orders, written in language so clear and perspicuous, that further explanation is frequently difficult and almost superfluous. Under these circumstances, the duties of any person who writes on these matters have become comparatively humble, and consist chiefly in so arranging materials that are open and accessible to the public, as to enable the reader to obtain all the information he requires, with the least expenditure of time and trouble."

The work sets forth *verbatim* all the material recent Acts, namely:—

"The Act for Improving the Jurisdiction in Equity, the Act for the Abolition of the Office of Master in Chancery, and the Act for the Relief of Suitors; together with all the General Orders that have issued up to the present time under the authority of these Acts, and for the purpose of carrying into further detail the statutory provisions contained in them. To these Acts and Orders, notes have been affixed, referring both to different parts of this and the original work, so as to enable the practitioner at once to find every rule and regulation bearing upon the particular point he wishes to investigate. The cases that have already occurred under the new system, will be found in the Notes, and an Appendix is added, containing all the Forms which up to this time have received the sanction of the Judges, and been issued by them for the convenience of solicitors, and to facilitate the transaction of business at Chambers."

The Author, in referring to the advantages to be derived by the public from the great changes that have been effected, states, that—

"He cannot let this work go forth without expressing his cordial sympathy with what has been accomplished, and his confidence that, guided by the same spirit, the Court of Chan-

cery is in the way to become as perfect as any human tribunal can be expected to be, for the decision of the complicated transactions of modern society. This opinion is stated with more confidence, as it is not now adopted for the first time. In a paper written by the Author of this work several years ago, and published in the *Law Review*, vol 6, p. 315, the abolition of the office of Master, and many of the other changes now carried into effect, were strongly recommended; and, in the conclusion of that paper, a prediction was made, with reference to the Judges performing a considerable portion of the business then transacted by the Masters, which is now in the course of being verified; namely, 'that so far from the proposed change lowering the position of the Judges in Equity, whoever may be the persons who first preside in the Courts of Chancery, after such alterations are effected, they will have a better opportunity of employing their learning and ingenuity in improving the administration of justice than has fallen to the lot of any man since the time when the doctrines and practice of Equity became moulded into a settled and established system.'

"It would not be right to let these Statutes and Orders go before the public, without paying a tribute to the candour and fairness displayed by the present Lord Chancellor, in all that he has done and said towards those who have contributed towards the enactment of those measures; and also to the vigour and ability he has himself displayed in carrying them through Parliament, and preparing and issuing the necessary General Orders to give them effect. The speech recently made by him in the House of Lords, proves that the whole subject of the Reform of the Court of Chancery has his continued attention, and that the public may reasonably expect from him further most material and beneficial changes."

If we recollect aright, the Metropolitan and Provincial Law Association claim some credit for suggesting improvements in the jurisdiction exercised by the Masters in Chancery. Who may be entitled to the merit of the primary suggestion, we will not undertake to decide.

*The New Practice of the Court of Chancery as introduced by the Acts of Parliament 15 & 16 Vict. cc. 80, 86, 87; and the Orders of Court; with a Bill of Costs, an Appendix of Forms, and Table of Fees arranged alphabetically, and a full Index.* By J. C. E. WEIGALL, Solicitor. London: Sweet. 1852.

MR. Weigall, in the Preface to his Volume, observes, that—

"The alterations introduced into the Practice of the Court of Chancery by the Acts and

Orders of 1852 are so extensive as to render necessary some such digest as the Author has attempted in the following pages, to enable the practitioner to ascertain, with readiness and accuracy, all the new practice bearing upon any particular point.

"This facility can be derived from no edition of the Acts and Orders, however numerous may be the accompanying notes.

"In this work the alterations have been arranged under their proper heads, in the order in which they are most likely to be sought for in practice, with the cases which have been hitherto decided upon the subject, so as to form a supplement to any existing book of practice.

"The inconveniences of the old system are shewn, with the advantages of the new (in stating which the Author has availed himself of the Report of the Chancery Commissioners), and reference has been made to the suggestions of the Chancery Commissioners, from which the new practice has emanated.

"A Table of Costs under the new system of practice has been added, and an Appendix, containing Forms and a Table of Fees payable by Stamps arranged alphabetically. This Table includes the fees fixed by the Orders of 4th December, 1852."

On the interesting subject of costs, Mr. Weigall thus writes:—

"In lieu of the fees hitherto payable to solicitors for instructions, for bills, for engrossing bills and claims, for copies of bills and claims, for abbreviating bills and making a brief thereof, solicitors are to be entitled to charge and be allowed, in suits commenced after the 2nd November, 1852, the fees specified in Schedule A. to the Orders of 7th August, 1852.

"The fees of solicitors for proceedings at Chambers are specified in the 5th Order of 16th October, 1852, which also provides, that for all other business than that specified in that Order, they are to be entitled to charge and be allowed such fees as by the practice of the Court they are entitled to for similar business.

"Where from the length of the attendance or the difficulty of the case, the Judge shall think the highest of the fees specified in the above Order an insufficient remuneration for the services performed, or where the preparation of the case to lay it before the Judge shall have required skill and labour for which no fee has been allowed, the Judge may allow such further fee, not exceeding one guinea, as, in his discretion, he may think fit—5th Order, 16th October, 1852.

"The charge for copies of proceedings made for the opposite party are to be at the rate of 4d. per folio—1st Order, 25th October, 1852, art. 5."

The Author's Sketch of a Bill of Costs according to the new course of proceeding

<sup>1</sup> Lord St. Leonards.

for obtaining the administration of an estate, is as follows:—

*Michaelmas Term, 1852.*

	£	s.	d.
Instructions to commence proceedings	0	13	4
Preparing original summons and the duplicate thereof . . . . .	0	13	4
Attending at Chambers to get same examined and sealed . . . . .	0	6	8
Copy for Judge . . . . .	0	2	0
Attending at the Record Office to file duplicate and examine copies and get same stamped . . . . .	0	6	8
Copy to serve . . . . .	0	2	0
Service thereof . . . . .	0	2	6
If defendant is at a distance the just and reasonable expenses properly incurred in the service will be allowed—120th Order, May, 1845.			
Attending same order made.			
This may be increased by the Judge or Chief Clerk to 13s. 4d. or 1l. 1s., according to circumstances.			
If defendant cannot be served before the return of the summons and it is therefore adjourned, the charge will be:—			
Endorsing summons and the copies and attending to get sealed . . . . .	0	6	8
Attending for order, drawing up and entering same . . . . .	0	6	8
Copy order for Judge . . . . .	0	2	6
If more than three sides charge 8d. per side, for the additional sides.			
Summons to consider order and attending to get same sealed . . . . .	0	6	8
Copy for Judge . . . . .	0	2	0
Copy to serve on defendant's solicitor . . . . .	0	2	0
Service thereof . . . . .	0	2	6
Attending same when directions given . . . . .	0	6	8
Preparing advertisements for creditors or next of kin . . . . .	0	6	8
Paid for stamps thereon . . . . .	0	6	8
Attending to get same signed and approved . . . . .	0	6	8
Copy for insertion in Gazette . . . . .	0	1	0
Paid insertion in Gazette . . . . .	0	6	8
Attending thereon . . . . .	0	6	8
Two copies for insertion in the London papers . . . . .	0	2	0
Paid insertions . . . . .	0	6	8
Attending . . . . .	0	6	8
Three copies for insertion in the country papers . . . . .	0	3	0
Paid insertion . . . . .	0	6	8
Attending inserting . . . . .	0	6	8
Perusing affidavits of claimants and attending in Chambers at the time appointed by the advertisement where the number of claims does not exceed five . . . . .	1	1	0
When the number exceeds five, for every additional number not exceeding five, an additional sum of . . . . .	1	1	0

For such further steps as may have been directed by the Judge, such fees as by the practice of the Court, solicitors are entitled to charge for similar business.

Term fee, &c. . . . . 0 15 0

*An Epitome of the New Chancery Practice, combining the Acts 15 & 16 Vict. cc. 80, 86, & 87; and all the General Orders hitherto made in pursuance thereof: being so arranged as to give a connected reading to the Acts and Orders; and to convey concisely the intent and meaning of their several Provisions. With an Appendix, containing the Acts and Orders.*  
By THOMAS W. BRAITHWAITE, of the Record and Writ Clerks' Office. London: Stevens and Norton. 1853.

Mr. Braithwaite's object in the present publication is thus stated:—

"The following Epitome is designed to assist the practitioner in his general use and application of the practice under the recent Statutes, by avoiding the necessity for repeated references from section to section, and from Order to Order, and by affording facilities for a ready comprehension of the intent and meaning of their several provisions.

"A mere glance at the Acts and Orders will be sufficient to show the difficulties which the practitioner must necessarily experience in endeavouring to ascertain therefrom which of the sections or Orders govern the practice in relation to any particular subject. It was therefore thought that if a combined re-arrangement, such as would give a connected reading to the Acts and Orders, were made, a material saving of time and trouble to the practitioner would be effected.

"In endeavouring to accomplish this object, the Author has so arranged, or rather rearranged, the new Acts, and has so combined therewith the General Orders of the Court which have been hitherto made in pursuance thereof, as to present the subject-matter of their several provisions in a connected form, and to convey concisely, and in language adapted to the ordinary intercourse of the Profession, the intent and meaning of such provisions.

"The Author would merely add his sincere hope that what he has done may be of some service to the Profession, and tend in some slight degree to further the accomplishment of the important reforms contemplated by the recent Statutes."

There are now so many editions of the Chancery Acts and Orders, with Notes and Annotations, that the practitioners, it may be hoped, will have little difficulty in steering their course safely amidst the numerous and comprehensive changes that have taken place both in the Law and the Practice of

the Courts. "Comparisons are odious," and it is scarcely practicable within our limits to point out the excellencies of each writer, or to notice his defects or omissions. The practical experience, means of knowledge, and the measure of diligence and learning which the respective authors are known to possess, will be the guides of the purchasers of these volumes. We willingly set forth the claims of each to the consideration of the Profession.

## PARLIAMENTARY AGENTS.

### NON-PROFESSIONAL PRACTITIONERS.

*To the Editor of the Legal Observer.*

SIR,—It has frequently occurred to me to consider the proper choice by country solicitors of a parliamentary agent. So long as those agents were a select, privileged, and very limited number, all more or less connected officially with the House of Commons, there was little choice; but now that the number is increased by members of our own Profession, I have for the last three years considered it a duty to give preference to a solicitor. The choice affords some chance of escaping from errors in the alterations of a Bill during its progress, which a well-educated professional man would avoid, but which I am sorry to state was not the case with me, from a well meant but injudicious and unadvised alteration in a Bill I had, made by a non-professional parliamentary agent.

On principle, I consider we ought to support each other; and if a reference is made to the terms of agency charges by a solicitor, and of no allowance whatever by the non-professional agents, there can be no doubt whatever there is an additional argument in favour of my recommendation.

A SOLICITOR OF 40 YEARS.

## LEGAL EDUCATION AT THE INNS OF COURT.

### PUBLIC EXAMINATION.

*Hilary Term, 1853.*

*The Council of Legal Education* have approved of the following Rules for the Public Examination of the Students. To afford a longer period for preparation, the Council have postponed the Examination until the 22nd, 24th, and 25th days of January, 1853.

The attention of the students is requested to the following Rules of the Inns of Court:—

"As an inducement to students to propose themselves for examination, studentships shall be founded of fifty guineas per annum each, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each public examination; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations, and the Inns of Court to which such students belong, may, if desired, dispense with any Terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar. Provided that the examiners shall not be obliged to confer or grant any studentship or certificate, unless they shall be of opinion that the examination of the students they select has been such as entitles them thereto.

"At every call to the Bar those students who have passed a public examination, and either obtained a studentship or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day."

*Rules for the Public Examination of Candidates for Honours, or Certificates entitling Students to be called to the Bar.*

An examination will be held in next Hilary Term, to which a student of any of the Inns of Court, who is desirous of becoming a candidate for a studentship or honours, or of obtaining a certificate of fitness for being called to the Bar, will be admissible.

Each student proposing to submit himself for examination, will be required to enter his name at the Treasurer's Office of the Inn of Court to which he belongs, on or before Wednesday, the 12th day of January next, and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction; or whether he is merely desirous of obtaining a certificate preliminary to a call to the Bar.

The examination will commence on Saturday, the 22nd January next, and will be continued on the Monday and Tuesday following.

Each of the three days of examination will be divided as under:—

From half-past nine, A.M., to half-past twelve.  
From half-past one, P.M., to half-past four.

The examination will be partly oral, and partly conducted by means of printed questions, to be delivered to the students when assembled for examination, and to be answered in writing.

The oral examination, and printed questions, will be founded on the books below mentioned; regard being had, however, to the particular object, with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the Bar, the examiners will principally have regard to the general knowledge of Law and Jurisprudence which he has displayed.



*The Reader on Constitutional Law and Legal History*, proposes to Examine on the following books :—

Hallam's *Constitutional History*, vols. 1 and 2.

Clarendon's *History of the Rebellion*, vols. 1 and 2.

May's *History of Parliament*.

Rapin's *History of the Reigns of Elizabeth to James the Second*, inclusive.

Those who present themselves to obtain distinction will be examined more minutely, and expected to answer more difficult questions, drawn from the same sources, and to be acquainted with the important statutes and trials of the period; and also to answer questions relating to the progress and alterations of English Law during the aforesaid reigns.

*The Reader on Equity* will examine in the following books:—

1. Mitford on Pleadings in the Court of Chancery; Calvert on Parties to suits in Chancery, chap. 1 and 2; Story on Equity Jurisprudence, vol. 1, and chapters 17 and 18, vol. 2; the Act for the Improvement of Equity Jurisdiction, 15 and 16 Vict. c. 86.

2. Sir James Wigram's Points in the Law of Discovery, "Defence by Plea;" the remainder of Story's Equity Jurisprudence, vol. 2; the principal Cases in White and Tudor's Leading Cases, vols. 1 and 2.

Candidates for certificates of fitness to be called to the Bar will be expected to be well acquainted with the books mentioned in the first of the above classes.

Candidates for a studentship or honours will be examined in the books mentioned in the two classes.

*The Reader in Jurisprudence* and the Civil Law proposes to examine in the Roman Law of Persons, as contained in the Institutes of Justinian, and as explained and illustrated by Heineccius (*Elementa Juris Civilis*); and Bowyer (*Modern Civil Law*).

Candidates for a studentship or other distinction will be expected to answer all questions of principle suggested by the text of the Institutes. They will also be examined in Mackintosh—*Law of Nature and Nations*; Bentham—*Principles of International Law*, vol. 2, pp. 535, et. seq. of Bowring's edition; Montesquieu—*Esprit des Lois*, livre 28; Spence—*Equitable Jurisdiction of Court of Chancery*, part 1, book 1, chap. 7; part 1, book 2, chap. 7; part 1, Appendix; Story—*Conflict of Laws*, chapter on "Capacity of Persons" and "Domicile."

Candidates for a certificate will be examined exclusively in Bowyer—*Modern Civil Law*, cap. 1 to chap. 12; Mackintosh—*Law of Nature and Nations*; Spence—*Equitable Jurisdiction of Court of Chancery*, part 1, book 1, chap. 7; Story—*Conflict of Laws*, chapter on "Capacity of Persons."

*The Reader on the Law of Real Property*

proposes to examine in the following books and subjects :—

#### BOOKS.

*Class 1.*—2 Blackst. Com., or 1 Steph. Com., book 2; 1 Spence, Eq. Jur., book 2, chap. 4; book 3 chap 1—7; Cru. Dig., tit. 11, 12, 16; Butler's Notes to Co. Lit., 191 a, sect. 2, 5; 271 b.

*Class 2.*—Shelford on Mortmain, chap. 3; Roper on Legacies, chap. 19; Lewis on Perpetuity, and Jarman on Wills, with reference to 1 Vict. c. 26, ss. 28, 29.

#### SUBJECTS,

*Class 1.*—The Nature of Estates of Freehold Tenure—their Quantity and Quality—their Rights and Incidents.

The Nature and Properties of Uses and Trusts, prior and subsequent to the Statute of Uses.

The Origin and Nature of a Lease and release, as an ordinary mode of Assurance.

*Class 2.*—The alterations effected by the Legislature during the last preceding and present reigns in the Practice of Conveyancing.

The Law of Mortmain; including therein the Law affecting the Alienation of Lands to Corporations, and the Disposition of Property to Religious and Charitable Purposes.

The Law of Settlement; its Effect upon the Rights and Liabilities of Husband and Wife, as exemplified in the case of Marriage Articles, Ante-Nuptial and Post-Nuptial Settlements—and upon the Rights of Creditors and Purchasers under 13 Eliz. c. 4, and 27 Eliz. c. 5.

Students offering themselves for the public examination, and not going out in honours will be expected to be well acquainted with the books and subjects comprised in Class I.

Students offering themselves for the public examination, and who are candidates for studentships or honours, will be expected to answer questions drawn from the books and subjects comprised in Class I. and Class II.

*The Reader on Common Law* proposes to examine in the following subjects and books :—

*Class 1.*—As to the nature of the Common Law generally (Stephen, Com., vol. 1, Intro. s. 3).

The Law of Principal and Agent, and of Bills of Exchange and Promissory Notes (so far as treated of in Smith's Merc. Law, 4th ed. book 1, chap. 5, and book 3, chap. 1).

The Law respecting tenancies from year to year, and for shorter periods (Woodfall on Landlord and Tenant, 6th ed., book 1, chap. 5, ss. 1 and 2).

The Law respecting Larceny and Obtaining Money by False Pretences (Arch. Cr. Pl., 12th ed., book 2, part 1, chap. 1, ss. 1 and 3).

*Class 2.*—The Law of Partnership and Corporations (so far as treated of in Smith's Merc. Law, 4th ed., book 1, chap. 2 and 4).

The Law of Distress (Woodfall, Landlord and Tenant, 6th ed., book 2, chap. 2, ss. 1, 2, 3).

The cases of *Asby v. White*, (1 Smith, L.

Cas., p. 105), and *Marriott v. Hampton*, (2 Id., p. 237); with the Notes thereto.

The Common Law Procedure Act (15 & 16 Vict. c. 76), so far as it treats of the writ, appearance, joinder of parties and of causes of action (ss. 1—41).

Students desiring merely to obtain a certificate to be called to the Bar, will be examined in the books and subjects comprised in Class I.

Candidates for studentships or honours will be expected to be familiar with the books and subjects specified in both the above classes, and also with leading cases (if any) bearing upon the several branches of law therein enumerated, decided since the last editions of the books above mentioned.

By order of the Council,

RICHARD BETHELL, *Chairman.*

*Council Chamber, Lincoln's Inn, Dec. 11, 1852.*

## NEW COVENANT IN LEASES.

*To the Editor of the Legal Observer.*

### RENT PAYABLE IN SILVER.

SIR,—Can you inform me if it is usual to provide for rent being paid in silver coin, if required. In a draft before me the rent is reserved in this manner, and I am assured by the lessor's solicitors, that the practice is becoming general. I have heard the question discussed, but on inquiry I cannot find any members of the Profession who actually adopt the rule.

A. B.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

### House of Lords.

#### New Bills.

Oaths in Chancery. Lord Chancellor.—*Passed.*

Law of Evidence and Procedure. Lord Brougham.—For 2nd reading.

County Courts' Equitable Jurisdiction. Lord Brougham.—For 2nd reading.

County Courts' Further Extension. Lord Brougham.—For 2nd reading.

District Courts of Bankruptcy Abolition. Lord Brougham.—For 2nd reading.

Metropolitan Building Act further Amendment. For 2nd reading.

Stamp Duties on Patents. *Passed.*

### House of Commons.

#### New Bills.

County Elections Polls. Lord Robert Grosvenor.—For 3rd reading.

Stamp Duties on Patents for Inventions. Mr. Wilson Patten.—*Passed.*

Courts of Common Law (Ireland). Solicitor-General of Ireland.—In Committee.

Parliamentary Electors' Rates. Sir De Lacy Evans.—*Negatived.*

County Financial Boards for Rating and expenditure. Mr. Milner Gibson.—For 2nd reading, 23rd Feb.

Designs' Act Extension. Lord Naas.—For 2nd reading, 16th Feb.

Parish Constables. Mr. Deedes. For 2nd reading.

Land Improvement (Ireland). In Committee, 16th Feb.

### NOTICES OF BILLS IN PARLIAMENT.

Repeal of Certificate Duty on Attorneys, Solicitors, Proctors, and Notaries (*early after the Recess*). Lord R. Grosvenor.

To facilitate the Transfer of Land. Mr. Henry Drummond.

To Transfer the Jurisdiction of the Ecclesiastical Courts to grant Probates of Wills and Letters of Administration, to the Superior Courts of Common Law and to the County Courts. Mr. Collier.

Abolition of Punishment of Death. Mr. Ewart.

Payment of Wages. Sir H. Halford.

Precluding Judges of Superior Courts from sitting in the House of Commons. Lord Hotham.

Shortening duration of Parliaments. Lord Dudley Stuart.

Law of Partnership. Mr. Potter.

New Trials in Criminal Cases (*after the Recess*). Mr. Isaac Butt.

## NOTES OF THE WEEK.

### NEW LAW OFFICERS AND APPOINTMENTS.

Right Hon. Lord Cranworth, Lord Chancellor.

Right Hon. Sir Geo. Turner, Lord Justice.

Sir W. Page Wood, Vice-Chancellor.

Rt. Hon. E. Strutt, Chancellor of Duchy of Lancaster.

Rt. Hon. M. Brady, Lord Chancellor of Ireland.

Mr. C. P. Villiers, Judge Advocate-General.

Sir A. J. E. Cockburn, Attorney-General.

Mr. Rd. Bethell, Solicitor-General.

Mr. Brewster, Attorney-General for Ireland.

Hon. E. P. Bouverie and Mr. John Sadleir, Lords of Treasury.

Mr. Robert Lowe and Mr. H. Austen Layard, Joint Secretaries to Board of Control.

# ADJOURNMENT OF THE HOUSES OF PARLIAMENT.

THE House of Lords has adjourned to the 10th Feb., and notice has been given of adjourning the House of Commons to the same day.

## HILARY TERM EXAMINATION.

The Examination will probably take place on Tuesday, the 25th January. The number

of Candidates at present is 84, but a few may be added by orders of the Judge. One of the Masters of the Queen's Bench will preside.

We understand that notice will be given next Term of an Examination in the Law of Real Property and Conveyancing, which hitherto has been optional with the Candidate. The alteration will take place, we expect, after the expiration of six months.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lords Justices.

*Blann v. Bell.* Nov. 13, 1852.

**WILL.—CONSTRUCTION.—WHERE ONE OF LEGATEES IN REMAINDER PRE-DECEASES TENANT FOR LIFE.**

*A testator directed the dividends of a sum of stock to be paid to a tenant for life and afterwards to his wife and his niece, and the survivor of them. The niece pre-deceased the tenant for life: Held, affirming the decision of the late Vice-Chancellor Parker, that the widow was entitled to a life estate only, and not to the stock absolutely.*

THIS was an appeal from the late Vice-Chancellor Parker. By his will, dated in 1842, the testator gave, devised, and bequeathed all the residue of his estate and effects to certain trustees upon trust *inter alia*, to pay the dividends of 1,500*l.* stock, to a party therein named, for life, and at her decease, between his wife and his niece and the survivor of them. The widow only survived the tenant for life, and claimed the stock absolutely. The Vice-Chancellor having held she was entitled to a life interest only, this appeal was presented.

*Malins and Collins* in support; *Walker, Giffard, and E. F. Smith.* contra.

The Lords Justices affirmed the decision of the Court below—the costs to be paid out of the estate.

*Egremont v. Egremont.* Dec. 9, 1852.

**EQUITY JURISDICTION IMPROVEMENT ACT.—APPOINTMENT OF GUARDIAN AD LITEM TO INFANT.**

*An order was made for the appointment of a guardian ad litem to an infant defendant, without a commission, upon an affidavit that the proposed guardian was a proper person, and had no adverse interest to the infant in the matters of the suit.*

THIS was an appeal from Vice-Chancellor Kindersley, refusing an order for the appointment of a guardian *ad litem* to an infant defendant without a commission.

*Nalder*, in support, referred to *Drant v. Vause*, 2 Y. & C., Ch., 524, and to the 15 & 16 Vict. c. 86, s. 21, which abolishes the practice of issuing commissions within the jurisdiction of the Court.

The Lords Justices said, that the order might be taken on an affidavit that the proposed

guardian was a proper person to be appointed, and that he had no adverse interest in the matters of the suit to that of the infant.

Dec. 22. — *Corporation of Liverpool v. Chorley Waterworks Company*—Judgment on appeal from Vice-Chancellor Kindersley.

— 22.—*Piddock v. Boulbee*—Guardian *ad litem* to defendant of unsound mind, not so found by inquisition, to be appointed on order of Vice-Chancellor.

— 22.—*Ex parte Braggiotti, in re Braggiotti*—Order for first-class certificate.

— 22.—*Ex parte Castelli, in re Castelli*—Reference back to the Commissioner.

— 23.—*Oxford, Worcester, and Wolverhampton Railway Company v. South Staffordshire Railway Company*—Judgment herein.

### Master of the Rolls.

*Southern v. Woollaston.* Dec. 11, 1852.

**BEQUEST.—TO CHILDREN OF TENANT FOR LIFE ON ATTAINING 25.—VALIDITY.—REMOTENESS.—THELLUSSON ACT.**

*Bequest to W. for life, and after his death to his children on their attaining the age of 25. W. died during the testator's lifetime: Held, that the bequest was not void for remoteness under the Thellusson Act.*

THE testator, by his will, gave the dividends of a sum of 400*l.* consols. to his cousin, Mr. Woollaston, for life, and after his death to his children on their attaining the age of 25. Mr. Woollaston died in the testator's lifetime. The question now arose, whether the children were entitled to the legacy, or whether it fell into the residue as void for remoteness under the Thellusson Act.

*Lloyd and Bilton*, for the trustees, in favour of the validity of the bequest; *Rouppell, R. Palmer, Rogers, Baggallay, and Thring* for other parties.

The Master of the Rolls said, that the legacy was valid on the authority of the decision of Vice-Chancellor Wigram in *Williams v. Teale*, 6 Hare, 239.

*Attorney-General v. Drapers' Company.* Dec. 22, 1852.

**MASTERS IN CHANCERY ABOLITION ACT.—APPOINTMENT OF SURVEYOR TO VALUE LAND REQUIRED BY COMPANY FOR PURPOSES OF THEIR ACT.**

*Order made for the appointment under the 15 & 16 Vict. c. 80, s. 42, of a surveyor to value certain lands required by a company for the purposes of their act, where the evidence as to their value was conflicting, but a direction was refused for regard to be paid to the fact that the lands were of more value to the company than to an ordinary purchaser, and the Court declined to appoint a surveyor who had already given evidence in the matter.*

THIS was an application for the appointment of a surveyor under the 15 & 16 Vict. c. 80, s. 42, to value certain lands in the parish of St. Peter-le-Poer, belonging to a charity, which were required by the above company for the purposes of their act. It appeared the evidence was conflicting as to the value of the property.

*Roupell* in support; *James* for the Attorney-General, sought the appointment of a surveyor who had already given evidence in the case, and for a direction that regard should be paid to the fact that the premises were of more value to the company than to any ordinary purchaser.

The *Master of the Rolls* said, that an independent surveyor would be appointed, and refused to give the direction asked, or fix a *pretium pactionis*.

Dec. 22.—*Bradley and others v. Scott and wife*—Application to change guardians to infants from the defendant and his wife.

— 23.—*Attorney-General v. Gilbert*—Order for division of fund as prayed.

— 23.—*Bridger v. Phillips*—Order on trustees to complete contract for sale of real estate.

— 23.—*Hurst v. Hurst*—Decree for foreclosure.

— 23.—*Richardson v. Ward and others*—Order varying marriage settlement in conformity with articles.

— 23.—*Banks v. Banks*—Usual order opening biddings on sale under decree.

— 23.—*Richards v. Scarborough Public Market Company*—Injunction granted.

#### Vice-Chancellor Turner.

*Crofts v. Middleton.* Dec. 6, 1852.

JURISDICTION OF EQUITY IMPROVEMENT ACT.—APPOINTMENT OF EXAMINER ABROAD.

*Order made appointing an examiner under the 15 & 16 Vict. c. 86, to take the examination of witnesses vivâ voce in Australia.*

THIS was an application for the appointment of an examiner to take the examination of certain witnesses in Australia *vivâ voce*, under the 15 & 16 Vict. c. 86.

The *Vice-Chancellor*, after consulting the other Judges, made the order as asked.

Dec. 22.—*In re Robinson's Charity*—Application for appointment of trustees to be made to Lord Chancellor.

Dec. 22.—*Money Penny v. Baker*—Injunction refused.

— 22.—*Attorney-General v. Sheffield Gas Consumers' Company; Sheffield United Gas-light Company v. Same*—Stand over.

— 23.—*Harley v. Harley*—Judgment on construction of will.

— 23.—*Deaville v. Deaville*—Order for plaintiff to attend to be examined *vivâ voce*.

— 23.—*Davenport v. Adams*—Leave to file claim for specific performance of lease.

— 22, 24.—*Farina v. Gebhardt*—Injunction refused.

#### Vice-Chancellor Kindersley.

*In re Ground's Estate.* Nov. 15, 1852.

PURCHASE-MONEY OF COPYHOLD LAND TAKEN BY RAILWAY.—INVESTMENT IN ENFRANCHISING.—CONVEYANCING COUNSEL.

*Order made for the investment, on the petition of the tenant for life, under the 4 & 5 Vict. c. 35, of the purchase-money of certain copyhold lands in the enfranchisement of the remaining portion—the difference in the amount required being advanced by the petitioner and charged on the estate—the counsel for the petitioner certifying his approval of the deed—otherwise the Court would have referred it to one of the conveyancing counsel under the 15 & 16 Vict. c. 80.*

THIS was a petition on behalf of the tenant for life of certain copyhold lands at East Dereham and Hoe, Norfolk, which had been taken for the purposes of the Norfolk Railway Company, for the investment of the purchase-money, paid into Court under the Lands' Clauses' Act (8 Vict. c. 18), in the enfranchisement of the remainder of the estate under the 4 & 5 Vict. c. 35,—the petitioner offering to advance the sum required above the purchase-money. The petitioner had power to appoint after his death amongst his children.

*Malins and Elderton* in support.

The *Vice-Chancellor* said, that in strictness the opinion of one of the conveyancing counsel should be taken as to the assignment, but upon the petitioner's counsel undertaking to certify his approval of the deed, the order was made as asked.

Dec. 22.—*In re March Charities*—Cur. ad. vult.

— 22.—*Ex parte Overseers of Ardsley*—Application refused for purchase-money paid by railway company for parish lands to be laid out in building union workhouse.

— 23.—*Piddock v. Boulbee*—Order for appointment of guardian *ad litem* of lunatic defendant.

— 23.—*Rice v. Rice*—Motion refused for order to appear on absconding debtor under 31st Order of May, 1845.

## Vice-Chancellor Stuart.

*In re Pennant and Craigwen Consolidated Lead Mining Company, ex parte Penn.* Nov. 12, 1852.

MINING COMPANY ON COST-BOOK PRINCIPLE.—LIABILITY OF CONTRIBUTORY.—WINDING-UP ACTS.

In a mining company, conducted on the cost-book principle, there was power of withdrawing on certain conditions being complied with. The appellant had relinquished his share in August, 1851. Upon the company being sometime afterwards wound up, held that the appellant was not liable as a contributory, in the absence of any fresh contract between the parties, and inasmuch as the lease which formed the subject-matter of the partnership, and in reference to which the amount subscribed by each was regulated, remained vested in the managing partners for the benefit of the concern.

THIS was an appeal from the decision of Master Tinney inserting the appellant's name on the list of contributories to the above company. It appeared that the company was formed on the cost-book principle, and that by one of the rules, "any shareholder may determine his or her responsibility or liability with respect to the affairs, upon his or her giving notice in writing to the purser of the company for the time being of his or her desire of retiring from the company, and also upon depositing with the said purser the transfer of the share or shares held by him or her, and signing a relinquishment of all claims or demands on the company in respect of such share or shares." The appellant had, in August, 1851, signed a relinquishment of his interest in the undertaking.

*Schoyn* for the appellant; *Rosburgh* and *Morris* for the official manager.

The Vice-Chancellor said, as the company was formed on the cost-book system, which made a shareholder liable for no more than the amount he had actually paid down, unless that amount should have been increased by some subsequent arrangement between the parties, and as the lease, which formed the subject-matter of the partnership, was vested in the managing partners for the benefit of the whole concern, and the amount subscribed by each must have had reference to what was necessary to answer liabilities in respect of such lease, the appellant was not liable as a contributory, and the appeal must be allowed—the costs to come out of the estate.

Dec. 22.—*In re Northampton Charities*—Application for appointment of new trustees to be made to Lord Chancellor.

—22.—*Goodwin v. Fielding* and another—Injunction granted.

—23.—*Brown v. Vernon*—Order for account of money due on mortgage and for sale.

—23.—*Colombine v. Penhall*; *Penhall v. Miller*—Part heard.

## Court of Queen's Bench.

*Henniker v. Henniker.* Nov. 10, 20, 1852.

DEED OF FAMILY ARRANGEMENT BETWEEN TENANTS IN COMMON.—STAMP ACT.—CONSIDERATION.—MONEY PAID FOR EQUALITY OF EXCHANGE.

A deed, in pursuance of an agreement between certain tenants in common of lands for a partition and exchange thereof among themselves, was held not a sale within the Stamp Act, 48 G. 3, c. 149, and that it was therefore unnecessary to state as consideration the money which had been paid for equality of exchange: Held, therefore, that the plaintiff was entitled to recover on a bond given to secure the payment of a sum of money for that purpose.

THIS was a demurrer to the plea in this action, which was brought to recover a sum of 800*l.*, and interest, upon a bond. It appeared that an agreement had been entered into by the tenants in common of certain estates for exchange and partition thereof among them, and that the sum in question was payable by the defendant to the plaintiff to make up an inequality in the value of property exchanged. The deed in pursuance of this agreement was duly executed, but the defendant objected, that as it did not state as consideration the 800*l.* secured by bond, the plaintiff was not entitled to recover under the Stamp Act, 43 Geo. 3, c. 149, ss. 22, 24.

*Unthank*, in support of the demurrer to a plea setting up this by way of defence, contended the transaction did not amount to a sale, and was not therefore within the Act.

*Willes*, contra, for the defendant.

The Court said, that the transaction in question was clearly not a sale, but a partition; and that it was not therefore necessary to express the amount paid for equality of exchange in the deed, and that the demurrer must be allowed, and the plaintiff was entitled to judgment.

## Court of Common Pleas.

*Leroux v. Brown.* Nov. 10, 1852.

PAROL CONTRACT MADE IN FRANCE.—STATUTE OF FRAUDS.—ACTION WILL NOT LIE IN THIS COUNTRY.

A contract was entered into at Calais, in France, for the supply by the plaintiff to the defendant, at a salary, of provisions for the London market. The employment was for a year, to commence at a day subsequent to the time of making the contract, which was parol: Held, that although it might be valid according to the law of France, it could not be enforced in this country, under the 29 Car. 2, c. 3, s. 4, and that an action for its breach would not lie. A rule was accordingly made absolute to enter the verdict for the defendant, on leave reserved.

THIS was a rule nisi to enter a nonsuit or a verdict for the defendant, pursuant to leave reserved. The action was brought on a parol

agreement entered into by the defendant to employ the plaintiff at certain wages, to collect provisions at Calais for the London market, and alleged as a breach, that although the plaintiff was ready and willing and requested to be so employed, the defendant wholly refused so to employ him or to pay him his wages. The defendant pleaded non assumpsit. On the trial before *Talfourd, J.*, at the Middlesex Sittings in Trinity Term last, it appeared that the employment was for a year, to commence at a day subsequent to the time of making the contract. The plaintiff obtained a verdict, subject to this motion, on the question whether it was within the Statute of Frauds (29 Car. 2, c. 3), and as it had been made in a foreign country.

*Allen, S. L.*, and *Metcalf* showed cause, citing *Carrington v. Roots*, 2 M. & W. 248; *Reade v. Lamb*, 6 Exch. R. 130.

*Hawkins and Honeyman* in support, referred to *Crosby v. Wadsworth*, 6 East, 602; *Laythorp v. Bryant*, 2 Bing. N. C. 735; *British Linen Company v. Drummond*, 10 B. & C. 903; *Fergusson v. Fyffe*, 8 Cl. & F. 121; *De la Vega v. Vianna*, 1 B. & Ad. 284; *Brown v. Thornton*, 6 A. & E. 185; *Dobell v. Hutchinson*, 3 A. & E. 355; *Lopez v. Burslem*, 4 Moore, P. C. 300; *Davis v. Trevanion*, 2 D. & L. 743.

The Court said, the Statute<sup>1</sup> applied not to

the contract, but to the proceedings upon it, and although it was good if enforced in France, it could not be enforced here. The action would therefore not lie, and the rule must be made absolute to enter the verdict for the defendant.

### Court of Exchequer.

*Mulhall v. Neville*. Nov. 22, 23, 1852.

BILL OF EXCHANGE. — ACCEPTANCE IN BLANK. — FILLING IN DATE BY INDORSEE.

*Rule absolute for the new trial of an action by indorsee against drawer and acceptor of bill of exchange, where evidence was rejected to support plea of non fecit to show that it was accepted in blank in 1846, and that the date had been filled in as of 1847 in the year 1851, by the plaintiff, the indorsee from the defendant's indorsee.*

THIS was a rule nisi granted on November 13 last, for a new trial of this action which was brought on a bill of exchange for 200*l.* drawn by the defendant and accepted by a Mr. Page in 1846, and payable four years after date. It appeared that the bill was not dated, and had been indorsed to a Mr. Cannon, who kept it until 1851, when he indorsed to the plaintiff, who filled in the date as of 1847. The defendant pleaded *non fecit*, and on the trial before *Pollock, L. C. B.*, at the last sittings for Middlesex, the plaintiff obtained a verdict, upon the evidence as to the acceptance in blank being rejected.

*Chambers and Petersdorff* showed cause, and cited *Russell v. Langstaff*, Doug. 514; *Schultz v. Astley*, 2 Bing. N. C. 544.

The Court, after taking time to consider, made the rule absolute for a new trial.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### LAW OF ATTORNEYS AND SOLICITORS.

#### ADMINISTERING OATHS.

*Affidavit*.—Swearing before attorney of party.—Although the exclusion by the Reg. Gen., Hil. T., 2 W. 4, pt. 1, r. 6, of affidavits sworn before the party's attorney is limited to cases where there is a record, this Court rejects them also in applications where there is no cause in Court. *In re Gray*, 1 L. & M. 93.

#### ADMISSION.

*Attorney practising in Court of Great Sessions in Wales*.—An attorney of the Court of Great Sessions in Wales can only be admitted an attorney of the Superior Courts, under the 11 Geo. 4, and 1 Wm. 4, c. 70, s. 17, upon payment of 60*l.*, the difference in amount between the duty payable upon the articles of clerkship of an attorney of the Court of Great Sessions in Wales, and that payable upon those

of an attorney of the Superior Courts. *In re Humphreys*, 7 D. & L. 344.

#### AGENT'S BILL OF COSTS.

*Taxation*.—A bill for work done by one attorney as agent for another, is taxable under the 6 & 7 Vict. c. 73, s. 37. *Smith v. Dimes*, 7 D. & L. 78.

Cases cited in the judgment: *Weymouth v. Knipe*, 3 Bing. N. C. 387; 5 Dowl. 495; 3 Scott, 764; *Cardale v. Bull*, 4 Q. B. 611; *Jones v. Roberts*, 8 Sim. 397; *In re Gedy*, 2 D. & L. 915; *In re Simons*, 3 D. & L. 156; 2 D. & L. 500; *Billing v. Coppock*, 1 Exch. R. 14; 5 D. & L. 126.

#### ALTERING NAME UPON THE ROLL.

1. The Court of Queen's Bench having allowed an attorney to alter his name on the Roll, this Court (for the sake of uniformity) allowed it. *Esparte Daggett*, 9 C. B. 218.

2. The Court permitted an attorney who

had been admitted in the Courts of Queen's Bench and Exchequer in the name of "Thomas James Moses," to sign the Roll of Attorneys of this Court (under the 6 & 7 Vict. c. 73, s. 27), by the name of "Thomas James," on the production of his admission in the Queen's Bench, upon an affidavit showing the circumstances under which he had changed his name, and also showing that the Courts of Queen's Bench and Exchequer had permitted the entry of his name on the respective Rolls of those Courts to be so altered. *Ex parte James*, 9 C. B. 220.

3. On the application of an attorney to be allowed to substitute the name of J. Heaton D. on the Roll of Attorneys, in the place of J. D., this Court refused to alter the Roll, but directed the Master to make a memorandum on the Roll opposite the party's name, stating that he was now known by the name of J. Heaton D., and that the memorandum was made by rule of Court. *In re Deardon*, 5 Exch. R. 740.

#### ARTICLED CLERK.

*Registry of articles nunc pro tunc.*—Where on a rule to reckon the service of articles of clerkship from the date of the articles, and not from the date of filing the affidavit of execution, it appeared that nearly the whole time of service had elapsed, the Court ordered that the matter should be inquired into by the Master, and that, unless he certified to the contrary within a certain time, the rule should be made absolute. *Ex parte Kellett*, 2 L. M. & P. 11.

#### AUTHORITY.

1. *Trespass.—Justification by attorney under warrant of commitment of Inferior Court.*—Trespass for false imprisonment. Plea, that *W. T.* had recovered judgment against the plaintiff in an inferior Court of Record; that subsequently the Judge, after hearing the parties, made an order under the 8 & 9 Vict. c. 127, for the payment of the debt; that the plaintiff made default in payment; that afterwards it was proved before the said Court that the plaintiff had notice of the order, and had been served with a copy and shown the original, and that the amount had been demanded of him; that thereupon the Judge "duly, and according to the form of the Statute," ordered the defendant to be imprisoned for 40 days, &c. It then stated, that the Judge, at the request of the defendant, then being the attorney of and for the said *W. T.*, and as such attorney duly and according to the form of the Statute, &c., made a warrant in writing, &c., directed to the serjeant-at-mace, and to the keeper of the debtors' prison, &c. The warrant was set out, which, after reciting the judgment, summons, and order to pay by instalments (but not stating any summons previous to the order of commitment), authorised the imprisonment of the plaintiff for 40 days. The plea then went on to state that the defendant, as such attorney, &c., delivered the warrant to the serjeant-at-mace, and that the serjeant-at-

mace, at the request of the defendant, so being such attorney, &c., arrested the plaintiff, and conveyed him to prison, &c., justifying the trespasses complained of. Replication, traversing that it was ordered that the plaintiff should be committed *modo et forma*; on which issue was joined.

At the trial, the only evidence which the defendant produced in support of his plea, was a warrant in the terms of the plea, but which was invalid on the face of it, for not stating any previous summons to the plaintiff to show cause why he should not be committed. The Judge, however, directed the jury to find for the defendant on the issue as taken.

*Held*, on motion for judgment *non obstante veredicto*, or for a new trial, that the plea must be taken after verdict to allege a valid order of commitment, notwithstanding it did not state any previous summons to the plaintiff to show cause why he should not be committed; and as no valid order of commitment was proved, that there was a misdirection on the part of the Judge, and that there must, consequently, be a new trial.

*Held*, also, that although an attorney who does no more than set a Court of competent jurisdiction in motion on behalf of his client is no trespasser, notwithstanding that the Court, on his motion, does an act of trespass by its officer; yet where, by a special plea, like the one in question, he attempts to justify his concurrence in the act complained of, he can only make out his justification by showing a legal authority under which he acted. *Kinning v. Buchanan*, 7 D. & L. 169.

Case cited in the judgment: *Ex parte Kinning*, 4 C. B. 507.

2. *Sheriff.—Testatum f. fa.—Return to.—Order to withdraw by attorney.*—To a writ of *f. fa.*, the sheriff returned that he received from *E. L. L.*, the attorney of the plaintiff in the said writ named, an order to withdraw from possession; and that he thereupon withdrew: *Held*, good. *Levy v. Abbott*, 7 D. & L. 185.

3. *Rule to compute.—Service on attorney of some of the defendants.*—In an action against three defendants upon bills of exchange, service of a rule nisi to compute upon the attorney of two is sufficient. *Etison v. Wood*, 1 L. & M. 63.

Cases cited: *Figgins v. Ward*, 2 C. & M. 424; 2 Dowl. 364; *Arnold v. Evans*, 9 Dowl. 219; 7 M. & W. 462.

4. *To institute a suit.—Costs.*—*A.*, who was an equitable mortgagee by deposit of deeds of property belonging to the estate of *B.*, was paid off by *C.*, on an agreement with the executors of *B.* (as their solicitor stated), that proceedings should be taken in *A.*'s name to enforce the mortgage security, and thereby to effect a sale of the whole or part of the mortgaged property: and the solicitor of the executors filed a claim for foreclosure in the name of *A.* against the representatives of *B.* *A.* denied that he had given authority to file the claim in his name, and moved that it might be taken off the

file: *Held*, that there being only assertion against assertion, and the solicitor alone stating that the instructions were given in the presence of *A.*—the case was to be governed by *Allen v. Bone*, 4 Beav. 493, and the claim was dismissed with costs, to be paid by the solicitor.

That, in such a case, the Court could not adjudicate between the solicitor, by whom the claim was filed, and the defendants, the representatives of *B.*, by whom the instructions were given to file the claim in *A.*'s name; and the Court left the solicitor to any legal remedy he might have against such parties. *Crossley v. Crowther*, 9 Hare, 384.

#### BILL OF COSTS.

1. *When sufficiently specific.*—*Consolidated actions.*—Judgment having been obtained against *W.*, the public officer of a banking company, the creditor issued writs of *sci. fa.* against seven of the shareholders, each of whom, severally, retained the same attorney for his defence. Afterwards, by consent, the actions (in the Court of Exchequer) were consolidated, and one tried.

*Held*, that it might be inferred from these facts, that the several retainers were withdrawn, and a joint retainer given to the attorney by all the defendants as to future proceedings; and

*Held*, that he might recover from one the amount of his bill of costs in the action tried, though that party was not the defendant in the individual action.

The attorney delivered a bill of costs to the one defendant, headed "In the Exchequer of Pleas, *A.*" (the defendant), "debtor to *B.*" (the attorney). The name of the particular cause tried was not given; but the nature of the business appeared by the items; and one of them, referring to the judgment against the public officer, mentioned the title of the cause in which that judgment was given. The bill contained items for business in Chancery.

*Held*, a sufficient bill (under Stat. 6 & 7 Vict. c. 73, s. 37), to charge defendant for the business (after consolidation) in the Court of Exchequer. *Anderson v. Boynton*, 13 Q. B. 308.

Cases cited in the judgment: *Lewis v. Primrose*, 6 Q. B. 265; *Engleheart v. Moore*, 15 M. & W. 548; *Martindale v. Falkner*, 2 C. B. 706; *Ivimey v. Marks*, 16 M. & W. 843.

2. *When sufficiently particular.*—In an action by an attorney for business done, it appeared that he had delivered a bill, under Stat. 6 & 7 Vict. c. 73, s. 37, which contained charges in respect of nine actions in the Court of Exchequer and two in the Court of Common Pleas. The Courts and the parties to these causes were named in the bill. It contained, also, items in respect of two other actions, each of which appeared to have been in some one of the Superior Courts of Law: as to one of these, the parties were named in the bill; as to the other, it appeared that the present defendant had informed plaintiff that an action

had been brought against him, defendant, and no more appeared to have been done. The items in respect of actions as to which both parties and Courts were specified, made up the greater part of the whole bill.

*Held*, a sufficient compliance with the Statute. *Keene v. Ward*, 13 Q. B. 515.

Case cited in the judgment: *Ivimey v. Marks*, 16 M. & W. 843.

3. *Title of cause.*—An attorney's bill of costs is sufficient within the Statute 6 & 7 Vict. c. 73, s. 37, if the Court and cause in which the business is done are so specified as to enable the client, with the bill alone, to take advice as to taxing it, although the technical name of the cause is not given. *Anderson v. Boynton*, 7 D. & L. 25.

Cases cited in the judgment: *Lewis v. Primrose*, 6 Q. B. 265; *Engleheart v. Moore*, 15 M. & W. 548; 4 D. & L. 60; *Ivimey v. Marks*, 16 M. & W. 843; 4 D. & L. 709.

4. *What insufficient as to cause and Court, under the 6 & 7 Vict. c. 73, s. 37.*—An attorney's bill did not in express terms state the names of the Court and of the cause in which the business charged for was done. One item of the bill referred to a petition presented by the client in the Court of Review; and a charge in another part of the bill was made for the attorney's attendance on the "petitioning solicitor;" but it did not appear in any part of the bill in what Court or cause the last-mentioned proceeding had taken place: *Held*, that the bill was insufficient. *Dimes v. Wright*, 7 D. & L. 292.

Case cited in the judgment: *Martindale v. Falkner*, 2 C. B. 706; 3 D. & L. 600.

5. *Heading and delivery of.*—An attorney was employed by the solicitor of a provisionally registered company to do some business for the company. He delivered his bill, headed "N. L. & H. Railway to R. H. D., debtor," to the solicitor, at the request of the latter. A copy of it was afterwards produced to the defendant, one of the provisional committee, who said that he had seen that bill before, that some of the charges were high, but that it would not be disputed; and the copy so produced was thereupon taken back.

*Held*, 1st, that the heading of the bill was sufficient to charge the defendant; and

2nd, That there was evidence to go to the jury of a personal delivery to the defendant.

Whether the delivery to the solicitor of the company was a delivery to the defendant, *quære?* *Phipps v. Daubney*, 2 L. M. & P. 180.

Case cited in the judgment: *Vincent v. Slaymaker*, 12 East, 372.

*See Delivery of Bill; Signed Bill.*

#### CHAMPERTY.

*Maintenance.*—An agreement may amount to champerty or maintenance, or savour of champerty, though made between persons not standing in the relation of solicitor and client, or in any analogous relation; and such an agree-



ment, if not amounting strictly to champerty or maintenance, so as to constitute a punishable offence, may still be against the policy of the law, and mischievous, and such as a Court of Equity ought to discourage and relieve against. *Reynell v. Sprye*, 8 Hare, 274, n.; *Sprye v. Reynell*, ib.

#### CHANGING SOLICITORS.

*Order.—Infants.—New next friend.*—In a suit by adults and infants, the next friend was changed by an order of the Court, on the application for which the original next friend appeared. The adult plaintiffs obtained an order of course at the Rolls for changing the solicitor, on a petition representing the original next friend as next friend, and stating incorrectly that the order changing the next friend had not been drawn up, passed, or entered : *Held*, that the order so obtained at the Rolls was irregular. *Pidduck v. Boulton*, 2 Sim. N. S. 223.

#### COSTS OF TAXATION.

*Judge's order containing no direction to tax.*—A Judge's order to tax an attorney's bill contained a clause reserving to the client the right to dispute his liability, on the ground of want of retainer and of negligence, and directed the Master to tax the items disputed on the latter ground separately. It contained no direction to the Master to tax the costs of the reference, as required by 6 & 7 Vict. c. 73, s. 37. The Master having taxed off less than a sixth of the whole bill, and having taxed the attorney the costs of the reference : *Held*, that the client was liable for the costs of the taxation, whatever might be the event of the question so reserved. *In re Shaw*, 2 L. M. & P. 214.

See *Taxation*.

#### COUNTY COURT.

*Attorney's remuneration for business in.*—The 91st section of the County Court Act, 9 & 10 Vict. c. 95, does not preclude an attorney from recovering from his client a reasonable remuneration for his work and labour done out of Court, before the institution of a suit, or take away the right of the Superior Courts to allow on taxation a reasonable remuneration for this description of labour. *Keighley v. Goodman*, 9 C. B. 338.

#### DEATH OF DEFENDANT'S ATTORNEY.

*Before trial.—Estoppel.—Omission to give notice of the fact to plaintiff.*—After notice of trial given, the defendant's attorney died, and the plaintiff, not being aware of the fact, went to trial, and obtained a verdict and judgment, and sued out execution, under which the defendant was detained in custody. The Court refused to set aside the proceedings, or to discharge the defendant out of custody; as it did not appear but that the defendant knew of the attorney's death at the time it occurred, and had withheld that knowledge from the plaintiff. *Ashley v. Brown*, 1 L. M. & P. 451.

#### DELIVERY OF BILL OF COSTS.

1. *Attachment.*—The Court will not grant

an attachment against an attorney for not delivering his bill of costs pursuant to a rule of Court, until after a formal demand has been made upon him for his bill, by some person duly authorised to make such demand. *In re Baster*, 7 D. & L. 296.

2. In a declaration against several co-contractors, containing counts for work and labour as an attorney, and for money paid, one of the defendants pleaded that the action was commenced after 6 & 7 Vict. c. 73, and was for the recovery of certain fees, charges, and "disbursements," claimed by the plaintiff to be due from the defendant in respect of certain business done as an attorney, "as in the first count in that behalf mentioned;" and that the plaintiff did not one calendar month before, &c., "deliver unto the said defendant, he being the party to be charged therewith, or send by the post to or leave for him at his counting-house, office of business, dwelling-house, or last known place of abode," a signed bill of costs.

*Held*, on special demurrer, that the plea was good, and sufficiently negatived a delivery of a signed bill in compliance with the statute.

*Held* also, that the word "disbursements" must be taken to apply to the "money paid" in the second count; and therefore, that the plea, which was pleaded generally to the whole declaration, contained a sufficient answer to that count also. *Tate v. Hutchins*, 7 D. & L. 123.

Case cited in the judgment : *Kitley v. Scottfield*, 6 Jur. 1059.

3. *Sufficiency of.*—An attorney's bill of costs contained various items relating to 12 actions, of which nine were stated to be in the Court of Exchequer, two in the Court of Common Pleas, and the remaining one was not described as of any Court, although it was clear from the nature of the items that the action was in one of the Superior Courts of Common Law : *Held*, on an issue of no signed bill delivered under the 6 & 7 Vict. c. 73, s. 37, in an action to recover the amount, that the bill was sufficient, as it gave reasonable information upon which the defendant might take advice as to having it taxed. *Keene v. Ward*, 7 D. & L. 333.

See *Bill of Costs ; Signed Bill*.

#### EVIDENCE.

See *Privileged Communications*.

#### EXAMINATION.

*Examiners' certificate.—Extending the time during which it shall be in force.*—This Court has not power to extend the time during which, under Reg. Gen., Easter T., 9 Vict., the certificate of examination for admission to practise as an attorney shall be in force: the extension must be by order of a judge.

Where a party applied to the Court for such extension after the time had expired, alleging that he had, two years ago, given the usual notices for admission and passed his examination, but had then gone abroad on account of ill health; that the time had elapsed while he

was abroad and detained by continued illness; that, before leaving England, he had been unacquainted with the necessity for enlarging the time, and therefore made no application for the purpose; and that he was negotiating for reception into a partnership, but the negotiation might be frustrated if his admission were delayed; the Court, on the last day of Term, allowed him to give notice and be examined for the purpose of admission during the next Term. *Esparte Young*, 13 Q. B. 662.

#### LIABILITY.

**Equitable assignment.—Jurisdiction.**—A railway company was indebted to A., their engineer, who was greatly indebted to his banker. The latter having pressed for payment or security, A., by letters to the solicitors of the company, authorised them to receive the money due to him from the railway company, and requested them to pay it to the banker. The solicitors, by letter, promised the banker to pay him such money on receiving it: *Held*, that this did not amount to an equitable assignment; and the solicitors having received the amount and paid it over to A., *held*, secondly, that this was no more than a promise or undertaking, for which the solicitors might possibly be responsible at law, but that the remedy was not in equity. *Rodick v. Gandell*, 12 Beav. 325.

#### See Responsibility.

#### LIEN.

1. **Set-off of costs.**—A cause, and all matters in difference between A. and B. were referred to an arbitrator, who was to have power to direct the verdict to be entered for A. or for B., the costs of the suit to abide the event of the award, and the costs of the reference and award to be in the discretion of the arbitrator. The arbitrator, by his award, directed a verdict to be entered for B., and awarded that 303*l.* 15*s.* was due from B. to A., in respect of the matters in difference, and which sum he ordered to be paid by B. to A. on a given day: *Held*, that B. was entitled to deduct from the sum so awarded to be paid by him, the amount of his taxed costs of the cause,—without regard to the lien of A.'s attorney for his costs of the cause and of the reference. *Dunn v. West*, 10 C. B. 420.

Cases cited in the judgment: *Figes v. Adams*, 4 Taunt. 633; *Hull v. Ody*, 2 B. & P. 28.

2. **Discharge out of custody.**—Where the plaintiff went abroad in 1841, shortly after the defendant had been taken in execution, and had not been since heard of, the circumstances affording reasonable grounds for believing that she had died abroad, and no will or grant of administration having been found upon search at Doctors' Commons,

*Held*, 1st, that the defendant was entitled to be discharged from custody. And,

2nd, that the lien of the plaintiff's attorney upon the judgment did not extend to a right to keep defendant in custody under the *ca. sa.* until those costs were paid. *Camp v. Pote*, 7 D. & L. 289.

3. **Discharge of defendant out of custody.—Final process.—Where plaintiff is dead.—Personal representative.**—The Court refused to discharge out of custody a defendant who was detained upon final process, on the ground of the death of the plaintiff, where the latter had left children, and his attorneys, who claimed to have a special lien upon the judgment, stated their intention to take out administration. *Cox v. Pritchard*, 2 L. M. & P. 298.

4. **Set-off.**—Where the plaintiff succeeded upon the issues of fact joined upon two counts of the declaration, but the defendant had judgment upon demurrer to the third count, the Court allowed the plaintiff to deduct the costs of the demurrer from his own costs and damages, notwithstanding the lien of the defendant's attorney.

*Semble per Maule, J.*, that an application to the Court to allow such deduction was unnecessary. *Scott v. De Richebourg*, 2 M. L. & P. 421.

Cases cited in the judgment: *George v. Elston*, 1 Bing. N. C. 513; 3 Dowl. 419; *Lees v. Refitt*, 3 A. & E. 707; 5 N. & M. 340.

5. **Undertaking.**—A., an attorney, having been employed by a former client of B., in consideration of the latter handing him over the papers in the cause, wrote as follows:—"Out of any moneys which I may receive on this or any other proceeding on the plaintiff's account, I will hand you such balance as may remain due of your bill of costs, as settled at 9*l.*:" *Held*, that A. was bound to pay B. out of the first moneys A. received on account of the client, and not out of the surplus after deducting his own costs. *Tharratt v. Trevor*, 7 Exch. R. 161.

#### LIMITATIONS, STATUTE OF.

**Receipt of interest on mortgage.—Authority.**—In March, 1832, the defendants, B. and C., who were then in partnership as solicitors, were employed by A. to lay out 500*l.* on mortgage. They lent the money to L. on the mortgage of certain premises, and retained possession of the mortgage deed. The premises were afterwards sold subject to the mortgage, and the purchaser paid C. the 500*l.* and interest, but without the knowledge of B., and the deed was given up to the purchaser by C., but no receipt was indorsed thereon, nor was any re-conveyance or receipt executed or signed by A., who was not informed that the money had been paid. In December, 1832, C., without the knowledge of B., returned to the purchaser 500*l.*, and received back the mortgage deed, and no part of the 500*l.* was paid to A. Interest, at first on the 500*l.*, and then upon the 300*l.*, was paid to C. by the purchaser; and entries were made in the books of the defendants, giving credit to A. for interest on the 500*l.*, and debiting him with interest paid to his agent. In July, 1838, the defendants dissolved partnership. Up to the dissolution interest on the 500*l.* was regularly paid to the agent of A. by C., by cheques

drawn by the defendants on their bankers; and after the dissolution, it was paid by C., sometimes in cash and sometimes by cheques on his own banker. In some of the receipts the money was described as interest upon a mortgage. A. died in May, 1840. In Dec. 1846, the purchaser paid C. the 300*l.* and interest, and received from him the mortgage deed. B. was ignorant of the receipts and payments subsequent to the investment of the 500*l.*, until 1849. In 1848, the plaintiffs, the executors of A., first discovered that the mortgage money had been re-paid: *Held*, that, under the above circumstances, the Statute of Limitations was a bar to the action; also, that no action would lie against B., inasmuch as the subsequent receipt of the mortgage money by C. was wholly unauthorised, and not within the scope of the partnership business. *Sims v. Brutton*, 5 Exch. R. 802.

#### LORD MAYOR'S COURT.

*Admissibility to practise in Lord Mayor's Court since Stat. 6 & 7 Vict. c. 73.—Mandamus.—Judgment on demurrer to return.*—Mandamus to the Lord Mayor and Aldermen of London recited, that A., who had been admitted an attorney of the Superior Courts of Law at Westminster, and also a solicitor of the Court of Chancery, had produced to the mayor and aldermen his admission to those Courts, properly verified, and requested them to admit him an attorney of a certain inferior Court within the said city, held before the Lord Mayor and Aldermen, and called the Lord Mayor's Court, on signing the roll of that Court, as directed by Stat. 6 & 7 Vict. c. 73, s. 27; and that they had refused, &c.; and the writ commanded them to admit, or show cause, &c.

Return: That from time whereof, &c., the Lord Mayor's Court was a Court of Record, and had by custom jurisdiction in the city as a Court of Law and a Court of Equity; that, besides entertaining ordinary actions, it was a peculiar jurisdiction in which many actions arising out of customs of the city were alone triable, particularly actions on bye-laws for breach of the city customs; that a large portion of the business, both in Law and in Equity, arose out of the law and peculiar practice of foreign attachment, established in the city by prescription; that the Court exercised criminal jurisdiction over freemen offending against the city laws and customs, on information filed by the Common Serjeant, which proceeding might result in disfranchisement; that the business arising out of the peculiar laws and customs differed in form and practice from that of the Courts at Westminster, and required great experience to qualify a practitioner; that, by the city custom, the attorney for a plaintiff administers an oath to his client, and keeps possession of the affidavit, on which an attachment issues; that, in certain actions, he takes sureties, which the custom requires his client to give, and he is answerable in case of their insufficiency; that, from

time whereof, &c., certain clerks or attorneys, not exceeding four, have had the exclusive right of practising in the said Court; that besides acting as attorneys, they attend the Lord Mayor and advise and assist him as his clerks in all matters of Equity and Law, assist the town clerk in corporation affairs, and perform, severally or together, certain other official duties relating to the public business of the corporation; that, for many years past, the office has been acquired by purchase, and the admission has been for life (subject to removal for misconduct), with power of alienation on payment of a fine, the alienee being admitted by the Court of Mayor and Aldermen, which is a Court of Record, and records the admission; that the person admitted makes the declaration required by law on admission to municipal offices, and takes a peculiar oath (which was set forth); and that the clerks or attorneys never sign any roll, but practise immediately on admission, subject to the control of the Court of Mayor and Aldermen, who may suspend or remove them for misconduct; and that there is not, nor has been, during the existence of the Lord Mayor's Court, any roll which a person admitted as an attorney could sign. And for these reasons, &c.

#### Special demurrer.

*Held*, by the Court of Queen's Bench (assuming the objection of argumentativeness not to be insisted upon), that the Lord Mayor's Court was an "inferior Court," within the letter of Stat. 6 & 7 Vict. c. 73, s. 27; and that the incidents of the Court, and office of attorney therein, as stated in the return, did not render the clause inapplicable; the statutory words being express.

And that the want of a roll was no answer, for the statute must be taken to mean that, if the Court had no roll which a person entitled to admission could sign, a roll must be provided.

Judgment, that the return is not valid, and that a peremptory mandamus issue.

#### On the writ of error,

*Held*, by the Court of Exchequer Chamber, without any decision on the above points. That the writ was had, inasmuch as it did not show that the Court was, within the terms of Stat. 6 & 7 Vict. c. 73, s. 27, an inferior Court "of Law" or "of Equity."

And that the defect was not helped by the return, since a peremptory mandamus could not go (as the Court below had awarded it) in the terms of the present writ.

Judgment reversed. *Regina v. Mayor of London*, 13 Q. B. 1: *Mayor of London v. Reginald*, ib. 30.

Cases cited: In the Queen's Bench, *Jordan v. Cole*, 1 H. Bl. 532; In the Exchequer Chamber, *Rex v. Margate Pier Company*, 3 B. & Ald. 220; *Regina v. Powell*, 1 Q. B. 352.

#### NEGLECT.

*Instructing counsel to appear.*—Assumpsit against an attorney for neglecting to instruct counsel to appear on behalf of the plaintiff in

an action brought by him against a third party. Plea, that the defendant did not neglect to instruct counsel to appear.

*Held*, that the allegation in the declaration meant neglecting to instruct counsel in such a way as to enable him to perform his duty; and that it was therefore established by evidence, that although a brief had been delivered to counsel, yet when the cause was called on, neither the defendant nor the witnesses were present. *Hawkins v. Harwood*, 7 D. & L. 181.

#### OVERSEERS' ATTORNEYS.

*Reimbursement of past expenses.—Attorneys' Bills.*—It is a principle of rating that the rate shall not be imposed to reimburse for past expenses: but the rule is subject to necessary exceptions.

Attorneys were employed by the overseers of a parish during 1844-5 and 1845-6, in parochial business. Some of the business ran continuously from one year into the other; but the greater part was done and concluded within 1844-5 and 1845-6 respectively. Poor-rates were made half-yearly, in January and in July or August: the overseers went out of office and made up their accounts in March. In August, 1846, the attorneys delivered their bill, not having before that time delivered any bill, or demanded or received any payment. No special cause appeared for the delay. The overseers for 1846-7 paid the whole sum, and charged it in their accounts. The auditor disallowed part of such charge, consisting of items not running continuously from year to year, on the ground that the rates in hand during 1846-7 were charged with the payment of these sums retrospectively.

On motion to quash the disallowance on *certiorari*, under Stat. 7 & 8 Vict., c. 101, s. 35, it appeared that, of the amount disallowed, 49l. was for business done in the year ending March, 1845; and 201l. was partly for business done between March 25th, 1845, and January 1st, 1846, and partly for business between the end of 1845 and March 1846. The overseers leaving office in March, 1845, had handed over 457l., rates of their year, to their successors, and left an amount uncollected, much exceeding the attorneys' costs then due. The overseers of 1845-6 handed over 11l., and left an amount uncollected, also much exceeding the costs then due. The overseers of 1846-7 collected as much of the outstanding rates as, with the sum handed over, exceeded the aggregate of costs due. The sum so collected they applied to current expenses; but they made a half-yearly rate at the end of July, 1846, out of which they paid the bills of costs.

*Held*, that the 49l. was rightly disallowed; but the Court quashed the disallowance as to the 201l. *Regina v. Read*, 13 Q. B. 524.

#### PETTY BAG OFFICE.

*Prohibition against County Court.—Inserting name and address of attorney in book.—Condition precedent.*—The plaintiff sued for and re-

covered from the defendant in a County Court certain arrears due on a paving rate, and a writ of prohibition was subsequently obtained on an *ex parte* application at the Petty Bag Office of the Court of Chancery.

The plaintiff had not caused the name and address of his attorney to be inserted in the book kept for that purpose at the Petty Bag Office, pursuant to the 12 & 13 Vict. c. 109, s. 44.

*Held*, 1st, that a rule to set aside the above writ was a "proceeding" within the 12 & 13 Vict. c. 109, s. 39, which one of the Superior Courts of Common Law at Westminster had therefore jurisdiction to hear and determine.

2ndly, That the insertion of the name and address of the attorney was not a condition precedent to the obtaining such a rule. *Baddeley v. Denton*, 7 D. & L. 210.

#### PRIVILEGE.

*Plea and replication thereto.*—To an action of debt for calls by a railway company, the defendant pleaded in abatement his privilege, as an attorney of the Court of Common Pleas, to be sued in that Court. To this the plaintiffs replied, that the defendant was an attorney of this Court; and the plea, after the prayer of judgment by inspection of the record, concluded by an entry of continuance by *cur. ad. vult.*, and a day for judgment was given to the plaintiffs: *Held*, that the plaintiffs were entitled to judgment, although there was no rejoinder, as it appeared that the defendant was an attorney of this Court. *South Staffordshire Railway Company v. Smith*, 5 Exch. R. 472.

#### PRIVILEGED COMMUNICATION.

1. *Evidence.—Statute of Limitations.*—The plaintiff was employed by the defendant as her attorney in winding up the affairs of her late husband, of whom she was executrix. In the course of that business, the plaintiff requested the defendant to let him have a statement of the debts of her late husband, and what had been paid, in order to prepare a case for counsel. The defendant, in consequence, sent to him an account-book, which contained an item of interest paid on a promissory note given by her to the plaintiff, for money advanced: *Held*, that the account-book was a privileged communication, and therefore the plaintiff could not, in an action on the note, give in evidence the item of interest paid, in order to defeat the Statute of Limitations. *Cleave v. Jones*, 7 Exch. R. 421.

2. *Excluding evidence of trust intended to be created.*—A privilege given for the protection of the client cannot have the effect of excluding evidence of a trust which he had intended to create, and thus defeat a claim by the parties who accepted the trust, to hold the trust property beneficially. *Russell v. Jackson*, 9 Hare, 387.

Cases cited in the judgment: *Duke of Bedford v. Marquis of Abercorn*, 1 My. & Cr. 312; *Nourse v. Finch*, 1 Ves. J. 344, 359.

3. *Professional confidence.—Distinction be-*

tween communications with a testator and communications with executors.—The reasons of the rule which protects from disclosure communications made in professional confidence, apply in cases of conflict between the client, or those claiming under him, and third persons, but do not apply in cases of testamentary disposition by the client as between different parties, all of whom claim under him. The privilege does not belong to the executors as against the next of kin, but following the legal interest is subject to the trusts and incidents to which the legal interest is subject.

On a bill by the next of kin of a deceased party against his executors, who were his residuary devisees and legatees, alleging that the gift of the property was made to them upon a secret trust for the foundation of a school, the solicitor of the testator, who was also, after the death of the testator, the solicitor of the defendants, the executors, was examined as a witness for the plaintiff. On a motion by the defendants to suppress the depositions of the solicitor on the ground of professional confidence: *Held*, that the communications between the testator and the solicitor might be read; and that the communications between the defendants, the executors, and the solicitor, after the death of the testator, were privileged. *Russell v. Jackson*, 9 Hare, 387.

Case cited in the judgment: *Greenough v. Gaskell*, 1 My. & K. 98.

4. *Illegal purpose*.—The existence of an illegal purpose would prevent any privilege from attaching to the communications between solicitor and client—*Semble*. *Russell v. Jackson*, 9 Hare, 387.

5. *Agent*.—Communications between solicitor and client, through the medium of an agent, are protected equally with communications had directly with the principal. *Russell v. Jackson*, 9 Hare, 387.

#### RESPONSIBILITY.

*Counsel undertaking to amend*.—Upon an alleged misjoinder of husband and wife as petitioners, counsel, upon the instructions of the solicitor, undertook to amend by making it the petition of the wife by her next friend: *Held*, that the solicitor was not personally responsible for the performance of the undertaking. *In re Williams*, 12 Beav. 510.

See *Liability*.

#### RETAINER.

1. *Sci. fa.*—*Consolidation of actions*.—Where a Judge's order is made by consent to consolidate actions against several defendants who have severally employed the same attorney, upon their undertaking to be bound by the event of the trial of one, the order to consolidate operates as a joint retainer by the defendants of the attorney, and they are jointly liable to him for the costs of the action which is tried. *Anderson v. Boynton*, 7 D. & L. 25.

2. *Estoppel*.—*Finding of Master*.—Case by one attorney against another for falsely representing that defendant was authorised by J. F.

to employ plaintiff to bring an action as attorney of J. F., and that defendant did so employ him; whereby plaintiff was compelled to discontinue the action and pay costs. Plea, that plaintiff was not employed *modo et forma*. Replication, that plaintiff's bill of costs in the action was referred by Judge's order to be taxed by the Master, with liberty to defendant to dispute the retainer; that the Master allowed 120*l.*, and plaintiff brought an action against defendant for that sum, and the question of retainer was referred to Master W., who certified that the retainer had been proved to the amount of 120*l.*, and that plaintiff signed judgment for that amount. The replication then identified the action in respect of which that claim was made, with that mentioned in the declaration.

*Held*, upon demurrer, that the replication was bad; the finding of the Master being no estoppel to the defendant in the present action. *Callow v. Jenkinson*, 2 L. M. & P. 403.

#### SET-OFF.

See *Lien*.

#### SIGNED BILL OF COSTS.

*Accord executory*.—*Account stated*.—*Pleading*.—A declaration stated that the defendant was indebted to the plaintiffs in divers unliquidated debts, viz., for so much as the plaintiffs deserved to have of the defendant for work done by the plaintiffs as attorneys for the defendant; that the plaintiffs alleged that the said debts amounted to 171*l.* 9*s.* 8*d.*, and the defendant to 147*l.*; that it was agreed that the dispute between them should be put an end to, and the amount of the debts fixed at 150*l.*; that the plaintiffs should relinquish their claim to the residue; and that the debts should be satisfied upon the terms of the defendant agreeing to pay the plaintiffs' 150*l.*; that the disputes were ended; that the debts were agreed and fixed at 150*l.*; that the plaintiffs had not made any further claim; and that the debts were satisfied upon the terms in that behalf. Breach, non-payment of 150*l.* Plea, that the plaintiffs did not, "one calendar month before the commencement of this suit, deliver to the defendant a signed bill."—*Held*, that the declaration, at the best, amounted to a special count on an account stated, and that the plea was good in form and substance. *Bridgman v. Dean*, 7 Exch. R. 199.

#### TAXATION OF COSTS.

*Where defendants sever in their pleading and appear by different attorneys*.—In an action of debt on a penal Statute against several defendants, who sever in their pleading and appear by separate attorneys, the costs of all need not be taxed at the same time. *Bruford v. Grifflin*, 6 Exch. R. 461.

See *Costs*.

#### WARRANT OF ATTORNEY.

*Attestation by uncertificated attorney*.—A warrant of attorney is sufficiently attested under the 1 & 2 Vict. c. 110, s. 9, by an uncertificated attorney. *Holgate v. Sligh*, 2 L. M. & P. 662.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 8, 1853.  
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## PROSPECTS OF LEGAL REFORM.

### THE NEW LAW OFFICERS.

UPON the retirement of Lord Derby and his friends, and before the present administration was constituted, we ventured to predict, that whoever assumed the reins of Government, the course of legal improvement, traced out in the last Session of Parliament, *must* be pursued. Enough has been done to make it impossible to stand still, and the temper of the age, and the tone of the public mind, alike forbid retrocession. Our anticipations have obtained an early confirmation in what fell from the Earl of Aberdeen in the House of Lords, on the occasion when he announced the formation of a Ministry, and the principles upon which the Government was to be conducted. In reference to the subject of Law Reform, the Prime Minister thus expressed himself:—

“Another want, and which I may say the people have now demanded, has been the progress of those law reforms, which were introduced by a late Government, and which were taken up by the noble and learned Lord now on the Woolsack (Lord St. Leonards), and prosecuted with so much vigour, ability, and success in his hands.

“This is a matter that must still be pursued, and it is, no doubt, one that will meet with the concurrence of your Lordships, and finally will give that satisfaction to the public which they have a right to receive. It is an object which we have all had in view, but which, until this time, we have not been able to accomplish.”

An announcement of the general intentions of the new Government is here gracefully combined with a recognition of the merits of the late Chancellor and his predecessor, as law

reformers, and an expression of confidence, that further measures for the improvement of our legal institutions, will meet the approval of the Legislature. It could not reasonably be expected that, at such a time, Lord Aberdeen should have been prepared to state more explicitly the course to be pursued; but, no doubt, soon after the re-assembling of Parliament in February next, the present Lord Chancellor will satisfy the impatience of the public by stating, whether any, or all, of the measures about to be introduced by the last Government, are now to be proceeded with. Lord Cranworth's elevated sense of public duty, and his calm good sense, furnish the best assurance that he will select the measures deemed most beneficial and requisite, without regard to the consideration with whom they originated. His character affords an ample guarantee, that he will sanction no change his judgment does not approve, and adopt no measure that has not some more solid recommendation than its novelty.

The new Solicitor-General, Mr. Bethell, is understood to have some bold and original views, with respect to the amalgamation of the jurisdiction heretofore exercised by the Courts of Law and Equity respectively, and giving to the judicial decisions of the House of Lords increased scope and significance. How far his position as one of the Law Officers of the Crown, will enable him to give effect to his peculiar sentiments upon these important questions, or how far the responsibilities of office may season or modify views entertained, it may be, without a very clear appreciation of the practical difficulties to be encountered, remains to be seen? At all events, the Solicitor-General's ability and experience justly entitle any proposition emanating from such a source, to attentive and candid consideration.

Although only a short period has elapsed,

since Lord St. Leonards stated, from the Woolsack, the measures he was prepared to introduce on behalf of the *then* existing government, the course of subsequent events has been so rapid and exciting, that many require and few can object to have their attention recalled to the various subjects upon which his Lordship intimated that it was intended to legislate.

The announcement of proposed measures included—

1st. One or more bills for the further *Relief of Suitors in Chancery*, by the reduction of expense, and the regulation of the Courts and Officers.

2ndly. A supplement to the Act 15 & 16 Vict. c. 83, for amending the Law in relation to *Patents for Inventions*.

3rdly. The Bill *Abolishing Masters Extraordinary* in Chancery, and substituting "Agents [or rather Commissioners] for Administering Oaths in Chancery," both in town and country.

4thly. A Bill amending the *Law, Jurisdiction, and Practice in Lunacy*.

5thly. A Bill altering the Jurisdiction, and amending the *Administration of the Law of Bankruptcy*.

6thly. A Bill to consolidate the various Acts relating to *Offences against the Person*.

And lastly; a Commission of Inquiry, with a view of founding upon the Report a measure for harmonising and assimilating the jurisdiction of various Courts, as regards *Testamentary Dispositions*.

With respect to the relative importance of the various measures included in this enumeration, and the best and most effective modes by which the proposed improvements might be carried out, great diversity of opinion necessarily prevails; but the expediency and necessity of the chief alterations announced by the late Chancellor appear to be very generally admitted. Taking into account the reforms already effected in the Court of Chancery, no disinterested person desires, and no one supposes, we presume, that the Accountant-General's department can be suffered to continue upon its present footing. The administration of lunatics' estates, under the superintendence of the Court of Chancery, is a scandal to the administration of Justice not to be longer endured; and the defects of the constitution and practice of the Court of Bankruptcy have become so apparent, that bankrupts and their creditors combine to seek other modes of administration, and a tribunal which has enormous funds at its

disposal and might confer great benefits on the commercial community, has ceased to be self-supporting,<sup>1</sup> and is all but deserted by suitors!

It is clear, therefore, that the leading measures of legal amendment announced at the commencement of the Session, were founded upon a just apprehension of what the public expected and required, and we shall be equally surprised and disappointed, if the noble and learned Lord, now placed at the head of the legal department, does not—in regard to the measures last indicated—cordially and earnestly adopt the views of his immediate predecessor, though it may be with more or less modification.

## NEW RULES AND ORDERS IN BANKRUPTCY.

[Concluded from page 148].

WE propose, in the present Number, to conclude the Analysis of the New Rules and Orders made in pursuance of the Bankrupt Law Consolidation Act, and which take effect from and after Tuesday next, the 11th instant.

The following are the Rules for *taking accounts of mortgaged property, and the sale thereof*:—

R. 55. Upon application (in the manner prescribed by R. 17) by any person claiming to be a mortgagee of any part of a bankrupt's estate, the Court will inquire whether such person is mortgagee, for what consideration and under what circumstances, and if no sufficient objection shall appear to the title of the person claiming under such security, the Court will take an account of the principal, interest, and costs, due upon such mortgage, and cause notice to be given when and in what way the mortgaged property shall be sold. The assignees (unless otherwise ordered) to have the conduct of the sale; but it is not to be imperative on the mortgagee to make such application.

56. All proper parties to join in conveyance when necessary.

57. Proceeds to be applied,—first, in payment of costs of assignees, of application to Court, and sale, and then in satisfaction of what shall be found due to mortgagee. Surplus to be paid to assignees; but if proceeds are insufficient to pay the mortgagee, he may prove for the deficiency.

58. For better taking of accounts, all parties may be examined by Court, and produce upon

<sup>1</sup> See the Table of Revenue and Expenditure of the Court of Bankruptcy, printed *ante*, p. 108, showing a large deficit upon the year 1851.

oath all deeds, papers, and writings, relating to the estate or effects of the bankrupt.

*Bankrupt's Balance Sheet.*

59. Bankrupt's balance sheet must be filed in duplicate, 10 days before the day appointed for last examination. Last examination will not otherwise be passed: office copies of balance sheet, or any part, to be provided by proper officer.

*Allowance of Certificate and Appeal.*

60. Allowance of certificate to be advertised two days before the time allowed by statute for appeal, and no certificate to be delivered except on production of *Gazette*, containing such advertisement.

61. After time allowed for appeal if no appeal entered, registrar to deliver certificate to bankrupt and to certify allowance to chief registrar.

62. Before application for recal of certificate, or appeal against the judgment of the Court allowing, refusing, or withholding, or class of certificate, the creditor or assignee or bankrupt appealing, to deposit with chief registrar such sum, not less than 10*l.*, and not exceeding 40*l.*, as Commissioners shall direct, to satisfy such costs as the appellant may be ordered to pay. In the absence of any direction 20*l.* to be deposited.

63. Notice of appeal against allowance or refusal, or withholding of certificate, to be left with chief registrar, who is to enter in the certificate book the time and nature of such appeal, and the date and substance of any order made thereupon.

64. Affidavits in support of petitions of appeal against allowance, refusal, or withholding of bankrupt's certificate or class thereof, to be filed at the time of filing petition of appeal.

*Audits.*

65. Bills of solicitors and messengers to be delivered to Registrar for taxation five days before audit. If audit adjourned by default of solicitor or messenger in that behalf, solicitor or messenger to pay the costs of the adjournment. No sum to be paid to any solicitor or messenger, on account of his bill, until taxed.

66. Audit accounts of official assignee, or creditors' assignee, to be made out in a specified form, and to be uniform in all the Courts.

67. At every audit, the debtor and property book of the official assignee to be examined and compared with audit paper. Cause of moneys remaining uncollected to be ascertained, and a minute thereof made and filed with proceedings. The debtors to be summoned, examined on oath, and examination filed. Court to direct further proceedings against such debtors.

The rules founded on sections 78 to 86 of the Bankrupt Law Consolidation Act, which relate to the summoning of a trader debtor, in order to compel an act of bankruptcy, are numbered from 68 to 88 of the

New Rules and Orders. As already stated at page 75, these Rules are a re-enactment of the Rules made under the Act 5 & 6 Vict. c. 122, which are to be found in all the modern treatises on the Law of Bankruptcy; it is therefore deemed unnecessary to insert an analysis of those Rules.

The Rules and Orders as to "Arrangements under the control of the Court," under sects. 211 to 223, of the 12 & 13 Vict. c. 106, on the other hand, are altogether novel, and are as follow:—

89. Petitions for arrangement to be delivered properly stamped between 11 and 2 o'clock, to the registrar of the day in London, or one of the registrars in the country, who is to file and number the petition and allot it by ballot, certifying the same to the Commissioner to whom it is allotted, and before whom such petition shall be prosecuted. Proviso, that one Commissioner may act in the absence of another, and that a second petition, by the same petitioner, is to be allotted to the same Commissioner.

90. Two fair copies of petition to be delivered with original, one for Commissioner and the other for official assignee and creditors.

91. Before appointment of any sitting under such petition, 10*l.*, or such other sum not exceeding 30*l.*, as Commissioner shall direct, to be deposited with official assignee, for costs of sittings and other necessary expenses.

92. When petitioner in custody, certificate of causes of detention to be annexed to petition.

93. Notices required to be given with respect to "arrangements, to be sent or served by the messenger of the Court.

94. Petitioning traders account to be attested by solicitor, and copy furnished to official assignee 10 days before day appointed for private sitting of the Court.

95. No person to be present at any sitting, or to inspect proceedings, except creditors or their authorised attorneys, the official assignee and his clerk, and the petitioner and two persons to accompany him.

96. Minutes of the proceedings at such sittings to be kept by the registrar.

97. Affidavits to be entitled in the Court and "in the matter of a petition for arrangement between A. B. and his creditors."

98. Forms of order for protection of petitioning trader under sect. 211, of renewal of protection, of release of petitioning trader from custody, of approval of resolution accepting petitioning trader's proposal, of protection from arrest to be indorsed, and of account to be filed by petitioning creditor, as given in schedule, to be used, with necessary variations.

*Arrangement by Deed.*

99. Forms of certificate by trustee or inspector, or of two creditors, and of account to be appended; of the affidavit of the trader to accompany the certificate; and of the certificate by the Court of execution of requisite number



of creditors, as given in schedule, to be used, with necessary variations.

#### *Enforcing Orders for Payment.*

100. Orders for payment of money and costs, or either of them, to be signed by Commissioner, sealed and counter-signed by registrar, and filed.

101. Order for costs to contain leave to issue execution.

102. Costs ordered to be paid to be taxed, and allocatur signed and dated by taxing officer.

103. Writs of execution, to enforce order for payment of money or costs, to be sealed and issued by chief registrar, on production of order or allocatur.

104. *Præcipe*, in specified form to be filed with chief registrar upon issuing writ of execution.

105. Chief registrar to keep *præcipe* book with alphabetical index.

106. Writs of execution to be in specified form, sealed, and executed by sheriff or other officer to whom execution of writs out of Superior Courts belongs, and who is to be allowed same fees as in Superior Courts.

107. Writs to be tested in name of Senior Commissioner, and returnable immediately after execution, before the Court of Bankruptcy in London.

108. The amount to be levied, the name, occupation and address of the debtor, and the name and place of business of the solicitor to be indorsed on writ.

109. *Venditioni exponas* to issue, on return that goods are seized but not sold.

110. Returns to be filed with chief registrar, and entered in *præcipe* book.

111. Entry of satisfaction in whole or in part.

112. Order for entry of satisfaction.

113. Amendment of writs and *præcipes* by Court of Bankruptcy as in Superior Courts.

#### *Course of Priority of Payments.*

114. After payment or retainer of all monies duly paid by the official assignee, and of the official assignees' per centage, the messenger and broker are to be paid to the choice of assignees, and then the solicitor, acting in the matter of the petition, until the same time.

115. In case the joint estate is insufficient, Court may order costs to be paid out of separate estate.

#### *Composition after Adjudication.*

116. Minute of first meeting (under 12 & 13 Vict. c. 106, ss. 230 and 231), to be taken by solicitor to assignees, and to distinguish which of the creditors assent to composition.

117. Second meeting to be before Commissioner, who is to inquire whether the Statute complied with.

118. Certificate of Commissioner stating what proportion of creditors who have proved assented, and if any sale made.

The Rules and Orders, numbered from 118 to 161, relate to the official assignees

and their duties; but as those Rules are not new either in terms or substance (with the single exception of the scale of allowance printed, *ante*, page 2), it is deemed unnecessary to reprint them.

Rule 161 declares, that these Orders as to official assignees under bankruptcies, are to be applicable to official assignees appointed under petitions for arrangement. Rule 162 directs, that printed copies of the Rules are to be supplied by the chief registrar, and Rule 162, the last of the series, rescinds all former Rules and Orders, and directs that the present Rules and Orders shall take effect from and after the 11th day of January, 1853.

### REPEAL OF CERTIFICATE DUTY.

OUR several correspondents, who have inquired regarding the measures to be adopted at the adjourned Session of Parliament on the 10th February, are informed that, according to the notice which will be found on the votes and proceedings of the House of Commons, Lord Robert Grosvenor will, on as early a day as possible, move for leave to bring in the bill.

No doubt, the new Chancellor of the Exchequer will be previously applied to, and his intentions ascertained.

If no satisfactory answer can be obtained, we presume the Incorporated Law Society will communicate, as heretofore, with all the other Law Societies, and with Solicitors in the cities and towns where there are no Law Societies, and suggest the course to be adopted by letters to their Representatives and by petitions to the House.

In the meantime, the solicitors, both in town and country should take an early opportunity, during the recess, of urging every member with whom they are acquainted to consider the grounds of their claim to relief, the justice of which cannot be disputed.

We may repeat the language of the late Chancellor of the Exchequer, and trust that the great party of which he was the head, as well as the new Government, will adopt his sentiments:—

“Nothing is more prejudicial to the country generally, than that considerable classes of her Majesty's subjects should consider that they are liable to regulations injuriously affecting their industry, and from which the rest of the community is free.” Mr. Disraeli also said—  
“Therefore, if there be on the part of the shipping body, or on the part of any other class in this country, well-founded claims

to the consideration of Parliament, it is highly expedient, not only to the interest of public morality, but from the most utilitarian consideration that could possibly occur to the most unsentimental minds, that we should enter into these questions, *ascertain the merits, and decide accordingly.*" And again he urged—"That all real grievances may be remedied, that we shall cease to hear of the claims of a particular interest as *subject to burthens and vexations, from which the community are free.*"

## LAW OF ATTORNEYS.

### OBLIGATION TO CARRY ON SUIT.—END OF RETAINER.

ALTHOUGH, as a general rule, an attorney is bound to carry on a suit to its termination, and cannot in the meantime sue for his costs, yet he may call on his client for adequate funds, and in case of refusal, may decline to proceed; and the retainer being determined by the death of the client, the attorney may sue his representatives. The Statute of Limitations, in such case, does not begin to run till the retainer has so ceased.

In a case in the Court of Exchequer, recently reported, the facts were, so far as essential to the decision, as follow :—

In 1835, Ann Lord, retained the plaintiff as her solicitor in a suit. In 1840, upon the suit being heard, an order was made that a supplemental bill should be filed, but such bill was never filed, nor any other proceeding taken. Ann Lord died in June, 1851, and the defendant took out letters of administration; and in July the plaintiff gave the defendant a written notice that, unless the sum of 30*l.* was paid to him for his bill of costs, he should cease to act any longer as solicitor in the suit. The plaintiff claimed in the present action the sum of 68*l.*, for costs and charges due to him up to Michaelmas Term, 1840, when the last proceedings in the suit were taken.

At the trial, the defendant insisted, that the Statute of Limitations barred the plaintiff's claim. Under the direction of Mr. Baron Martin,, a verdict was found for the plaintiff for 68*l.*, with leave to the defendant to move to set aside that verdict; and the following extracts from the judgment of the Court will show the present state of the Law on this subject :—

"Pollock, C. B.—The simple point is, whether the plaintiff's claim is barred by the Statute of Limitations, the suit in which he was retained not having been terminated, and no notice having been given by him that he would not pro-

ceed with it. The case of *Nicholls v. Wilson*,<sup>1</sup> which decided that there may be circumstances which would dispense with such a notice had been relied on. But I do not think that the present case forms any exception whatever to the general rule, that as long as the suit is going on, so long is the attorney bound to attend to it; and he cannot sue for his costs during such period, unless some communication takes place between him and his client, by which the retainer is so far put an end to as to give him a right of action. It could not be left to the jury to say whether the cause had not been brought to such a difficult and perplexing pass as to afford no reasonable prospect of arriving at a termination, and therefore to be considered, for all practical purposes, as brought to a conclusion. Here the plaintiff's cause of action did not arise before the death of the client, and therefore the debt was not barred by the Statute."

"Parke, B.—The rule as applicable to this case, was correctly laid down in *Harris v. Osbourn*,<sup>2</sup> that an attorney under a retainer to conduct a suit, undertakes to conduct the suit to its final termination, and he cannot sue for his bill until that time has arrived, subject, however, to the exception there stated, and subject also to the additional exception which arises upon the death of the client, in which case he can sue the personal representatives. But Mr. Phipson seeks to introduce another qualification to the rule; for he contends that where a suit in the Court of Chancery falls into a state of sleep for a lengthened period, the attorney may sue his client when a reasonable time has elapsed after the suit has fallen into such a state. But I think there is no authority for that position. I cannot imagine that there should not be some means of terminating the suit; and unquestionably he might have given his client a notice in the same way that he gave notice to her representative. The plaintiff's claim is therefore not barred by the Statute, and this rule ought to be discharged. *Whitehead v. Lord*, 7 Exch. R. 691.

## FEES IN THE COMMON LAW COURTS.

### INCREASE OF FEES.

We recently adverted (p. 126, *ante*), to the increase in many of the Common Law Fees which the Treasury thought fit to levy under the new Procedure Act. Great disappointment has been occasioned by these Taxes on the Administration of Justice. It was understood to be the object of the Legislature that these tolls at every stage in legal proceedings should be either abolished or reduced to a moderate amount. It may be useful to place before our readers some remarks applicable to this Scale of Fees, in order that the extent of the increase

<sup>1</sup> 11 M. & W. 106.

<sup>2</sup> 2 Cr. & M. 699.

may be fully known, and measures taken to procure a remedy. We understand, it is useless to appeal to the Treasury at present; but at the commencement of the Sessions, a return might be moved for of the amount received in Michaelmas and Hilary Terms, as compared with the receipts in the same Terms in the previous year.

#### MASTERS' OFFICE.

Every writ (except writ of trial or subpœna)	£	s.	d.
Every concurrent, alias pluries or renewed writ	0	5	0
Every writ of trial	0	2	6
Every writ or subpœna before a Judge or Master	0	2	0
Every writ or subpœna before the sheriff	0	1	0
Every appearance entered	0	2	0
The above fees have not been altered.			
Each defendant after the first	0	1	0
This is an additional fee not charged before.			

Filing every affidavit, writ, or other proceeding

This used to be 1s., and in a great many instances documents were filed without any charge being made. It will considerably increase the expense of a cause, as filing documents often occur.

Amending every writ or other proceeding

This is an addition to the fee of 6d. before charged for amending the precipe, or rather for searching for it. The 2s. will now be charged in addition to the 6d., making 2s. 6d. altogether; previous to this scale of fees the charge was 6d. only

Every ordinary rule

It does not appear what an ordinary rule is—a rule to change the venue which is drawn up as of course upon producing an affidavit and motion paper, is held to be a special rule and so charged.

Every special rule not exceeding 6 folios

This is the old charge, but is really increased by the charge of 2s. for filing affidavits and documents instead of 1s. Thus, a rule to change the venue, which was before charged 6s., viz., rule 4s. and filing order and affidavit 2s.,—is now charged 8s., viz., rule 4s. and filing order and affidavit 4s.

Every special rule exceeding 6 folios, per folio

This is an addition to the old fee.  
Note.—Plans, sections, &c., accompanying the rules, to be paid for by the party taking the rule, according to the actual cost.

Every judgment by default

This appears to be a reduction, but is in fact an increase of 1s. The present charge being, judgment 5s., filing affidavit of service of writ 2s., filing copy writ annexed to the affidavit 2s., making in all 9s.; the old charge being only 8s.

Every final judgment otherwise than judgment by default

This is an increase of 2s. upon the old charge, and if any document be filed, a further increase of 2s.

Taxing every bill of costs not exceeding 3 folios

This is an increase of 1s., or double the former charge.

Taxing every bill of costs exceeding three folios, when taxed as between party and party, per folio

This is also an increase: the usual charge being 1s. per side, which is estimated to contain 3 folios, and it is therefore an increase of half the original charge.

Taxing every bill of costs exceeding 3 folios, when taxed as between attorney and client, or where the attorney taxes his own bill, per folio

This is a large increase on the old charge—nearly double.

Every reference, inquiry, examination, or other special matter referred to the Master, for every meeting not exceeding one hour

For every additional hour or less

These items are reasonable enough as the value of the Master's time; but until now a fee of one guinea was paid for his report without regard to the time occupied in the inquiry.

Upon payment of money into Court, viz. :—

For every sum under 50l.

50l. and under 100l.

100l. and above that sum

This is an entirely new fee.

Every certificate

Office copies of percipe or other proceedings, per folio

Every search, if not more than two terms

And not more than four terms

Exceeding four terms, or a general search

This is an increase in many cases, such as searching for appearance and searching for declaration, and these items occur in almost every cause.

Every affidavit, affirmation, &c., taken before the Master

Filing every recognisance or security in ejectment or error

Every allowance and justification of bail

For taking special bail as a Commissioner

Filing affidavit, and enrolling arti-

	£	s.	d.
cles previous to the admission of an attorney . . . . .	0	5	0
Every re-admission of an attorney . . . . .	0	5	0
These fees appear to be the same as before.			

ASSOCIATES.

Every record of Nisi Prius delivered to the associate to be entered for trial . . . . .	1	5	0
This is an increase of 13s. 4d. on 11s. 8d. in the Queen's Bench, and 8s. in the Exchequer by 17s.			
Every trial of a cause from plaintiff . . . . .	1	0	0
Every trial of a cause from defendant . . . . .	0	15	0
Every trial of a cause if the trial continue more than one day, then for every other day from plaintiff and defendant, each . . . . .	0	10	0

These fees are reduced.

Returning the postea . . . . .	0	5	0
The same as before.			
Every cause made remanet, at the instance of the parties, to be paid by plaintiff or defendant, as the case may be . . . . .	0	10	0

This is an increase, the old remanet fee being 4s.			
Every cause withdrawn to be paid by the party at whose instance it is withdrawn . . . . .	0	5	0
This is an increase of 1s., the old fee being 4s.			

Re-entering every record of Nisi Prius made remanet, &c. . . . .	0	2	0
This is a new charge altogether.			
Every reference from plaintiff and defendant, each . . . . .	0	5	0

This is a new charge.			
Every amendment of any proceeding whatever . . . . .	0	2	0
This is a new charge, but will not be an addition, unless an order to amend is also charged for.			
Every order or certificate . . . . .	0	5	0

The same as before.			
Every special case or special verdict, in addition to the charge for ingrossing and copying, at the rate of 4d. per folio from plaintiff and defendant, each . . . . .	0	10	0

This is a new charge altogether.			
Attending any Court or otherwise with any record or other proceeding under writ of subpoena or special order of Court, per day . . . . .	1	0	0

The same as before.

JUDGES' CLERKS.

*Chambers of the Chief and Puisne Judges.*

	£	s.	d.
Every summons to try an issue before the sheriff . . . . .	0	1	0
Every other summons whatever, whether in Terms or Vacation . . . . .	0	2	0
Every order to try an issue before the sheriff . . . . .	0	1	0
Every other order whatever of an ordinary nature . . . . .	0	2	0

The same as before, except that in £ s. d. Term a summons was 1s. only.

Every order of a special nature, such as reference to arbitration or attendance of witnesses at arbitration; service of process on persons residing abroad; reference to the Master to fix sum for final judgment, revival of judgment, and the like . . . . . 0 5 0

This is an increase of 2s., the old charge being 3s.

Every fiat, warrant, certificate, caveat, special case, special verdict, or the like . . . . . 0 5 0

This is an increase of 2s. 6d., the old charge being 2s. 6d.

Every affidavit, affirmation, &c., whether in Term or Vacation, each deponent . . . . . 0 1 0

The old charge was 1s. in Term and 2s. in Vacation.

Every affidavit kept for the purpose of being conveyed to the proper office to be filed . . . . . 0 1 0

This is a new item.

Every proceeding filed . . . . . 0 2 0

This is an increase, the old charge being 1s.

Every admission of an attorney . . . . . 1 0 0

If this includes all the fees relating to an admission, it will be a reduction. The present fees amount to 1l. 17s.

In the remaining fees there is little or no alteration.

FEEs ABOLISHED.

Appearance sec. stat. . . . .	0	2	0
Rule to plead . . . . .	0	1	0
Rule to plead several matters . . . . .	0	5	0
Counsel's signature . . . . .	0	10	6
Passing record . . . . .	0	7	0
Pleading fee . . . . .	0	7	0
Returning venire . . . . .	0	3	6
Distringas . . . . .	0	12	0

INDEX TO THE STATUTES RELATING TO THE LAW.

15 & 16 VICT.

IN the last volume we gave the list of all the Public General Acts of the Session in the order in which they passed. (See 44 L. O., p. 477.) It may be useful to add an alphabetical index of such of the Statutes as particularly relate to the Law. They are as follow :—

*Abolition of Offices.* See Master in Chancery;—Nisi Prius Officers;—Secretary of Bankrupts.

*Administration of Personal Estates of Intestates and others,* to which Her Majesty may be entitled in right of Her Prerogative, or in right of Her Duchy of Lancaster; c. 3.

*Bankrupts,* to abolish the Office of Lord Chancellor's Secretary of, and to regulate the

Office of Chief Registrar of the Court of, Bankruptcy; c. 77.

*Births, Deaths, &c.*, to amend 6 & 7 W. 4 c. 86, for registering; c. 25.

*Burial of the Dead in the Metropolis*, to amend the Laws concerning; c. 85.

*Chancery* (Court of); to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Despatch of Business in the said Court; c. 80.

*Chancery* (Court of); for the relief of Suitors of; c. 86.

*Chancery* (Court of); to amend the Practice and Course of Proceeding in; c. 87.

*Common Law Procedure*; to amend the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at Westminster, and in the Superior Courts of the Counties Palatine of Lancaster and Durham; c. 76.

*Commons Inclosure*; to authorize the Inclosure of certain Lands in pursuance of the Seventh Annual and also of a Special Report of the Inclosure Commissioners; c. 2.

*Commons Inclosure Acts Extension*; to amend and further extend the Acts for the Inclosure, Exchange, and Improvement of Land; c. 79.

*Copyholds*. See Enfranchisement of Copyholds.

*Copyright*; to enable Her Majesty to carry into effect a convention with France on the Subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings; c. 12.

*Corporations* (Municipal), further to explain and amend 5 & 6 W. 4. c. 76. and 3 & 4 Vict. c. 108, for the Regulation of; c. 5.

*County Courts* further Extension; further to facilitate and arrange Proceedings in; c. 54.

*County Rates*, to consolidate and amend the Statutes relating to the Assessment and Collection of; c. 81.

*Courts of Common Law*: to make Provision for a permanent Establishment of Officers to perform the Duties at Nisi Prius in the Superior Courts of Common Law, and for the Payment of such Officers and of the Judges Clerks by Salaries, and to abolish certain Offices in those Courts; c. 73.

*Crown Revenues, &c.*; to alter and amend certain Acts relating to the Woods, Forests, and Land Revenues of the Crown; c. 62.

*Crown*; to remove Doubts as to the Lands and Casual Revenues of the Crown in the Colonies and Foreign Possessions of her Majesty; c. 39.

*Deaths, &c.*; to amend 6 & 7 W. 4. c. 86, for registering; c. 25.

*Disabilities*, to repeal certain [imposed on Members of either House of Parliament] under 1 G. 1, c. 13, and 6 G. 3, c. 53; c. 43.

*Disfranchisement of St. Alban's*; c. 9.

*Dissenters* (Protestant), to amend the law relating to the certifying and registering Places of Religious Worship of; c. 36.

*Durham Superior Courts*. See Common Law Procedure.

*Ecclesiastical Jurisdiction* for further continuing certain temporary Provisions concerning; c. 17.

*Elections of Members of Parliament*; to provide for more effectual Inquiry into the Existence of corrupt Practices at; c. 57.

*Enfranchisement of Copyholds*; to extend the Provisions of the Acts for the Commutation of Manorial Rights, and for the gradual Enfranchisement of Lands of Copyhold and Customary Tenure; c. 51.

*Engravings*, to explain the Acts relating to Copyright in; c. 12.

*Evidence*, to amend the Law of, in Scotland; c. 27.

*Excise*, to amend the Laws relating to summary Proceedings for Penalties and Forfeitures under the Acts relating to; c. 61.

*Friendly Societies*, to continue and amend 13 & 14 Vict. c. 115, to consolidate the Laws relating to; c. 65.

*Health, General Board of*; to confirm certain Provisional Orders of the General Board of Health, and to amend the Public Health Act, 1848; c. 42.

*Health, General Board of*; to confirm certain Provisional Orders of; c. 69.

*Highway Rates*, to continue 4 & 5 Vict. c. 59, for authorising the application of, to Turnpike Roads; c. 19.

*Inclosure, Exchange, and Improvement of Land*, to amend and further extend the Acts for; c. 79.

*Inclosure of Lands*; to authorise the Inclosure of certain Lands in pursuance of the Seventh Annual and also of a Special Report of the Inclosure Commissioners: c. 2.

*Incumbered Estates*; to continue the Powers of applying for a Sale of Lands under the Act 12 & 13 Vict. c. 77, for facilitating the Sale and Transfer of Incumbered Estates in Ireland; c. 67.

*Indemnity*; annual Act to Indemnify such Persons as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those Purposes respectively; c. 4.

*Intestates*, to provide for the Administration of Personal Estates of Intestates and others, to which her Majesty may be entitled in right of her Prerogative, or in right of her Duchy of Lancaster; c. 3.

*Inventions*, for extending the Term of the Provisional Registration of, under "The Protection of Inventions Act, 1851;" c. 6.

*Inventions*, amending the Law for granting Patents for; c. 83.

*Judges' Clerks*. See Nisi Prius Officers.

*Justices of the Peace*; to explain 13 Vict. c. 64, relating to the Authority of Justices of the Peace to act in certain Matters relating to the Poor in Cities and Boroughs; c. 38.

*Lancaster Superior Courts*. See Common Law Procedure.

*Loan Societies*, to continue 3 and 4 Vict. 110, to amend the Laws relating to; c. 15.

*Lamatics*, for the Amendment of the Law respecting the property of; c. 48.

*Marriages, &c.*, to amend 6 & 7 W. 4, for registering; c. 25.

*Master in Chancery Abolition*; to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Despatch of Business in the said Court; c. 80.

*Municipal Corporations*, further to explain and amend 5 & 6 W. 4, c. 76, and 3 & 4 Vict. c. 108, for the Regulation of; c. 5.

*Nisi Prius Officers*; to make Provision for a permanent Establishment of Officers to perform the Duties at Nisi Prius, in the Superior Courts of Common Law, and for the Payment of such Officers and of the Judge's Clerk by Salaries, and to abolish certain Offices in those Courts; c. 73.

*Parliament*, to shorten the Time required for assembling, after a Dissolution thereof; c. 23.

*Parliament*, Members of; to repeal certain Disabilities [imposed upon Members of either House of Parliament] under 1 G. 1, c. 13, and 6 G. 3, c. 53; c. 43.

*Parliament*; to provide for more effectual Inquiry into the Existence of corrupt Practices at Elections for Members to serve in; c. 57.

See also Representative Peers.

*Passengers*, to amend and consolidate the Laws relating to the Carriage of, by Sea; c. 44.

*Patents for Inventions*, amending the Law for granting; c. 83.

*Poor*; to continue 14 & 15 Vict. c. 105, for charging the Maintenance of certain poor Persons in Unions upon the Common Fund; c. 14.

*Poor*; to continue the Exemption of Inhabitants from Liability to be rated, as such, in respect of Stock in Trade or other Property, to the Relief of; c. 18.

*Poor*; to explain 12 Vict. c. 8, and 13 Vict. c. 64, concerning the appointments of Overseers, and the Authority of Justices of the Peace to act in certain Matters relating to the Poor in Cities and Boroughs; c. 38.

*Poor Law Board*, to continue; c. 59.

*Property Tax*; to continue the Duties on Profits arising from Property, Professions, Trades, and Offices; c. 20.

*Provident Societies*, to legalise the formation of; c. 31.

*Registration (Provisional) of Inventions* under "the Protection of Inventions Act, 1851," for extending the Term of; c. 6.

*Registration of Births, Deaths, and Marriages* to amend 6 & 7 W. 4, c. 86, for; c. 25.

*Representative Peers*, to amend 14 & 15 Vict. c. 87, to regulate certain Proceedings in relation to the Election of; c. 35.

*Stamp Duties*; to continue the Stamp Duties granted by 5 & 6 Vict. c. 82, to assimilate the Stamp Duties in Great Britain and Ireland; and to make Regulations for collecting and managing the same; c. 21.

*Stock in Trade*; to continue the Exemption of Inhabitants from Liability to be rated, as such, in respect of Stock in Trade or other Property, to the Relief of the Poor; c. 18.

*Suitors of the High Court of Chancery*, for the Relief of; c. 87.

*Trustees' Act Extension*; to extend the Provisions of "The Trustee Act, 1850;" c. 55.

*Turnpike Acts*, to continue certain; c. 58.

*Turnpike Roads*, to continue 4 & 5 Vict. c. 59, for authorising the application of Highway Rates to; c. 19.

*Turnpike Roads*, to continue certain Acts for regulating; c. 22.

*Turnpike Trusts*, to confirm certain Provisional Orders made under 14 & 15 Vict. c. 38, to facilitate Arrangements for the Relief of, and to make certain Provisions for Exemptions from Tolls; c. 33.

*Water*, to make better Provision respecting the Supply of, to the Metropolis; c. 84.

*Wills*; for the Amendment of 1 Vict. c. 26 "for the Amendment of the Laws with respect to Wills;" c. 24.

*Witnesses*. See Evidence.

## EVIDENCE IN CHANCERY.

### EMPLOYMENT OF SHORT-HAND WRITERS.

THE late Examiner, Mr. Plumer, having requested Mr. Morton, the short-hand writer, to put the following suggestions which he had made, into writing, we have been requested, in consequence of the lamented death of Mr. Plumer, to give publicity to the suggestions which appear to have received the favourable attention of the late Examiner.

"There can be no doubt that much of the advantage of *visé voce* examination must be lost in the process of taking it down in the ordinary way—by common writing. Not only is it in the highest degree tedious, and consequently expensive—the witness must attend for days in some instances before his examination, cross-examination, and re-examination can be completed—but the slow pace at which it proceeds affords those opportunities for evasion and concealment which are found to be great obstacles to the discovery of truth. Again, evidence so taken can rarely, if ever, be taken in the witness's own words, from the difficulty of following the questions and answers, and also because the narrative form almost precludes an adherence to the exact words.

"These difficulties were felt so strongly upon committees of the House of Commons, that so long ago as 1802, Mr. Michael Angelo Taylor introduced a clause into his Act for regulating the Proceedings of Election Committees, authorising the employment of short-hand writers to take down the evidence, and from that time to this they have been authoritatively employed upon all committees of both Houses of Parliament; and it is admitted by all persons conversant with the subject, that the result has been, not only to facilitate the labours of committees, but greatly to shorten the time, and consequently to lessen the expenses of such in-

quiries in the attendance of counsel, witnesses, &c. Indeed, it is obvious that without the assistance of short-hand writing, no such inquiries as have been gone into of late years upon railway bills, &c., could ever have taken place. Of course, the value of the matter thus recorded, and sometimes published in 'Blue Books,' is quite beside the present question. It must frequently happen that much of the evidence taken in a suit may turn out to be unimportant, but still it must be taken; the question is, in *what mode*?

"There are, no doubt, difficulties in the way of employing short-hand writers authoritatively in legal proceedings. 1st. Evidence taken down *verbatim* in question and answer must run to greater length than when given in a narrative form. 2nd. The expense of taking copies, the labour of perusal, &c., must be proportionably increased. 3rd. The taking down of evidence in short-hand requires a certain amount of skill and intelligence.

"I presume, it was from a consideration of these objections that the Chancery Commissioners recommended that the evidence should be taken down by the Examiners in the ordinary way, and given in the narrative form.

"How far the experiment has been tried, or has been found successful, where the witness has been examined and cross-examined by counsel, instead of upon interrogatories, I am unable from my own experience to state, but believing that it must in the nature of things be attended by great difficulties, I am inclined to think it must ultimately be abandoned, unless the aid of short-hand writing be resorted to. I would beg, therefore, to suggest a mode by which the latter alternative might be adopted without giving rise to any inconveniences apprehended from it.

"I should propose that certain well-qualified short-hand writers be appointed to attend the Examiners, &c., upon the examination of witnesses to take *verbatim* minutes of the questions and answers, and afterwards to write out from such minutes a statement of the evidence in the narrative form, giving it, where desirable, in the witness's exact words; such statement to be read over to the witness in the presence of the Examiner, &c. Should any question arise as to the correctness of the statement, the short-hand writer would refer to his *verbatim* minutes, and the statement might be amended or amplified, or the witness might be allowed to make verbal or substantial corrections at the Examiner's discretion. Should either party wish to be furnished with a *verbatim* copy of the minutes, the short-hand writer would be at liberty to furnish it. The charges for the attendance of the short-hand writer, for the abridged statement, and for the *verbatim* copy, to be fixed by the Lord Chancellor, the Examiners, or other authority.

"The advantages of employing short-hand writing in such a mode would be three-fold.—1. It would be attended with great saving of time, and consequently of expense, in the attendance of counsel, witnesses, &c. 2. The

evidence in all cases would be taken down in the exact words of the witness, which might at any time be referred to. 3. The substance and effect of the evidence might still be given in a narrative form, so as not to add to the bulk of proceedings, or to the labours of the Judges or counsel; with this great advantage, that the narrative so given might always be compared with the *ipsissima verba*, and its accuracy and completeness so conclusively tested.

"With regard to the supposed difficulty of finding a sufficient number of competent short-hand writers, no such thing in fact exists. Nothing would be more easy than for the Incorporated Law Society, or a committee of solicitors to be nominated by it, to select persons of adequate skill and experience who would be competent for all the duties above indicated. So long as the Court or any competent authority shall refuse to take any trouble in the matter, it is not to be expected that every person calling himself a short-hand writer shall possess any high degree of skill or intelligence, but as the work of selection would in this case be an easy one, the only question seems be whether the plan I suggest, would not be for the public benefit.

"I am satisfied that no greater improvement could be effected in the Courts of Law and Equity and in the offices connected with them, than by putting the Profession of short-hand writing upon such a footing that it could with safety be authoritatively employed in all their proceedings, and at such a cost as would place no new burden on the suitors, while it would greatly facilitate the labours of the Judges and their officers, counsel, and solicitors; and the first step towards such an improvement is, in my opinion, to put short-hand writing upon the footing of a profession by imposing some test of competency upon those who enter it, and by subjecting it to such regulations as will insure its skillful and honest practice. On the other hand, nothing could well be more unsatisfactory than the present state of things, except, indeed, the creation of anything like a monopoly in the Courts or elsewhere. Parliament, some years ago, committed the mistake of throwing the whole of its business into the hands of a single individual, upon the principle of having a "responsible head" to the department; the result of which has been that he has treated it, not unnaturally, as his own private concern; and to this, perhaps, more than to any other cause, it is owing that the profession, as such, has never acquired any *status*, and that the Legal Profession and the Public have been deprived of many of the facilities it would otherwise be capable of affording in the administration of Justice.

EDWARD MORTON.

Cannon Row, Parliament Street.

[We think these suggestions highly valuable, ably stated, and well entitled to the consideration of the Profession'—ED.]

## HILARY TERM EXAMINATION.

THE Examiners appointed for the Examination of persons applying to be admitted Attorneys, have fixed *Tuesday*, the 25th instant, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the Examination.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left with the Secretary, on or before *Tuesday*, the 18th inst.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.

If part of the Term has been served with a *Barrister*, *Special Pleader*, or *London Agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute

Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the Preliminary Questions (No. 1); and it is expected that he should answer in *three* or more of the other heads of inquiry,—*Common Law* and *Equity* being two thereof.

## NOTES OF THE WEEK.

### COUNTY COURT COSTS.

WE understand that the Committee of County Court Judges have settled the proposed Scale of Costs to be allowed between party and party and attorney and client, and the same is now under the consideration of the Judges of the Superior Courts.

### LAW APPOINTMENT.

Her Majesty has been pleased to appoint *Richard Davies Hanson, Esq.*, to be Advocate-General for the Colony of South Australia.—From the *London Gazette* of Dec. 31.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lords Justices.

*Lee v. Busk.* Dec. 4, 1852.

**WILL.—CONSTRUCTION.—RESIDUARY BEQUEST.—LIFE INTEREST.—TITLE BY IMPLICATION.**

*A testatrix gave her residuary personal estate in trust for J. L., and directed that if he should die in her lifetime without leaving any child or children surviving, then the residue of her trust moneys should be in trust for C. L. Upon the death of J. L. before the testatrix, leaving children: Held, affirming the decision of the Master of the Rolls, that such children were not entitled by implication, but that C. L. took under the will.*

THE testatrix, Mary Tabitha Lee, by her will, dated in 1847, gave her residuary personal estate to the trustees therein named, in trust for John Lee, and she directed, that if he should die in her lifetime without leaving any child or children surviving, then the residue of her trust moneys should be in trust for the Rev. Chas. Lee. John Lee having left children at his death before the testatrix, this claim had been filed on their behalf claiming to be entitled to the fund by implication, and upon the Master of the Rolls having dismissed the same, this appeal had been presented.

*R. Palmer, Terrell, and Grenside* in support; *Faber and Greene*, contra, were not called on.

The Lords Justices said, as it was impossible to determine from the language of the will

whether the gift was to the personal estate of John Lee or to his children, the case was one of intestacy and passed under the residuary devise. The appeal must be dismissed—the costs to be paid out of the personal estate.

### Master of the Rolls.

*McDonnell v. Hesilrige.* Dec. 7, 1852.

**SETTLEMENT IN CONTEMPLATION OF MARRIAGE.—EFFECT OF, WHERE MARRIAGE WITH ANOTHER PARTY.**

*Upon a marriage being contemplated between a lady and T., the lady's property was settled on trust for her sole use until the marriage, if any, of her and T. should be solemnized, or in case no such marriage should be solemnized, or in case of the solemnization, if any, of the same marriage, and from and after such marriage, upon certain uses: Held, that the settlement applied, although she married another party, and not T.*

UPON a marriage being in contemplation between Elizabeth Hesilrige and Mr. Taylor in 1834, a deed of settlement of her property was executed on trust for the sole use of herself until the marriage, if any, of her and — Taylor should be solemnized, or in case no such marriage should be solemnized, or in case of the solemnization, if any, of the same marriage, and from and after such marriage to the uses therein contained. The marriage in question did not take place, but she married



another gentlemen, and the question arose, whether the trusts of the settlement were applicable.

*Roupell, R. Palmer, C. Chapman Barber, Welch, and Cory* for the several parties.

The Master of the Rolls held, that the trust applied to her marriage with any other party.

*Patrick v. Andrews.* Dec. 11, 20, 1852.

LUNATIC DEFENDANT.—GUARDIAN AD LITEM.—APPOINTMENT OF SOLICITOR.

*The Court refused to appoint as guardian ad litem to a lunatic defendant, the sole surviving trustee, his nephew, who was the family solicitor.*

THIS was a motion for the appointment of a guardian *ad litem* to a lunatic defendant in this suit, which was instituted against him as sole surviving trustee by the *cestuis que trustent* of a fund. It was proposed to appoint the nephew, who had acted as the family solicitor.

*Freeling* in support.

The Master of the Rolls, after taking time to consider, refused the motion.

Vice-Chancellor Turner.

*Keyse v. Haydon.* Dec. 2, 1852.

SPECIFIC PERFORMANCE OF CONTRACT.—TITLE.—PRACTICE.

*The Court decided, at the hearing of a claim on behalf of a vendor for the specific performance of a contract entered into by the defendant, that the contract must be enforced, and directed an entry to be made in the registrar's book to that effect, and the cause to stand over for the title to be investigated.*

THIS claim was filed by the vendor for the specific performance of a contract, upon the purchaser refusing to complete on the ground that his requisitions as to title had not been answered.

*Roll and Wright* for the plaintiff; *J. Russell and Selwyn* for the defendant.

The Vice-Chancellor, after deciding that the plaintiff was entitled to a decree, said, that an entry would have to be made in the registrar's book to that effect, and the case stand over for the title to be investigated.

*Ewington v. Fenn.* Dec. 21, 1852.

ADMINISTRATION CLAIM.—DECREE AGAINST SURVIVING EXECUTOR.—REPRESENTATIVES OF DECEASED EXECUTOR.—CERTIFICATE OF MASTER.

*Application refused for direction to the Master to issue his certificate under the 18th Order of April, 1850, to bring before the Court by summons the executors of a deceased executor, in an administration claim, where the decree was taken against the surviving executor, but leave was given to file a supplemental claim.*

*W. Morris* appeared in support of this application for a direction to the Master in this

administration claim, to issue his certificate under the 18th Order of April, 1850,<sup>1</sup> for the purpose of bringing the executors of a deceased executor, who had received assets without having accounted for the same, before the Court by writ of summons. It appeared the order was made against the surviving executor alone.

The Vice-Chancellor said, the representatives of the deceased executor could only be made parties by a supplemental claim, and gave leave accordingly for the same to be filed, refusing this application.

*Davenport v. Adams.* Dec. 23, 1852.

CLAIM.—LEAVE TO FILE.—SPECIFIC PERFORMANCE OF CONTRACT TO GRANT LEASE.

*Leave given under the 6th Order of April, 1850, to file a claim to enforce the specific performance of an agreement to grant a lease.*

*Amphlett* appeared in support of this application for leave, under the 6th Order of April, 1850, to file a claim to enforce the specific performance of a contract to grant a lease.

By Order 1, "Any person seeking equitable relief may, without special leave of the Court, and instead of proceeding by bill of complaint in the usual form, file a claim in the Record and Writ Clerks' Office," "in any case where the plaintiff is, or claims to be,"—"8. A person entitled to the specific performance of an agreement for the sale or purchase of any property, seeking such specific performance."

The Vice-Chancellor granted the application.

*Cousins v. Vasey.* Dec. 17, 1852.

MOTION FOR DECREE ON NOTICE.—CERTIFICATE OF RECORDS AND WRITS CLERK.

*Direction to Record and Writs' Clerk to certify cause in fit state for hearing, in order to be set down by the registrar, under the 27th Order of August 7, on motion for a decree upon notice under the 22nd Order and the 15 & 16 Vict. c. 86, s. 15, although the answers had been filed before the Act came into operation.*

THIS was a motion for a direction on the Clerk of Records and Writs to issue a certificate to the registrar, that this cause was in a fit state for hearing, in order to its being set down under the 27th Order of August 7 last.

<sup>1</sup> Which directs, that "if upon the proceedings before the Master under any such order, it shall appear to the Master that some persons, not already parties, ought to attend or to be enabled to attend the proceedings before him, he is to be at liberty to certify the same; and upon the production of such certificate to the Record and Writ Clerk, the plaintiff may sue out a writ of summons requiring the persons named in such certificate to appear to the writ, and such persons are thereupon to be named and treated as defendants to the suit."

Notice of motion for a decree had been given, under the 15 & 16 Vict. c. 86, s. 15, and the 22nd Order of Aug. 7. A question had been raised whether the case was within the Act, the answers having been filed before the Act came into operation.

*Prendergast* in support.

The *Vice-Chancellor*, after consulting the other Judges, made the order as asked.

**Vice-Chancellor Kindersley.**

*Sharpe v. Blondeau.* Dec. 21, 1852.

**ALTERATION OF INDORSEMENT IN COPY BILL FOR SERVICE ABROAD.**

*On order for leave to serve a copy of a bill upon a defendant abroad, a direction was given for the time in the indorsement within which an appearance is to be entered under the schedule to the 15 & 16 Vict. c. 86, to be altered from 8 to 14 days.*

LEAVE had been given in this case to serve a defendant abroad with a copy of the bill, and for the appearance to be entered within 14 days after such service. The indorsement, however, being printed in the form given in the schedule to the 15 & 16 Vict. c. 86, this application was made for such indorsement to be altered from 8 to 14 days.

*Prendergast* in support.

The *Vice-Chancellor* said, the indorsement might be altered, and that in future the indorsement on bills would not be printed to avoid any future questions.

*Robinson v. Hewetson.* Dec. 11, 21, 1852.

**PETITION BY FEME SOLE.—SUBSEQUENT MARRIAGE.—AMENDMENT BY ADDING HUSBAND.—STAMP.**

*Leave given to amend action by feme sole, who had married after it had been answered, but before it was put into the paper, by adding the name of husband without a fresh stamp being affixed.*

THIS was a petition for the payment of a legacy out of Court, but it appeared that the petitioner had married after it was answered, but before it was in the paper, and this application was therefore now made for leave to amend by adding the husband as a petitioner without a fresh stamp.

*Metcalf* in support.

The *Vice-Chancellor*, after consulting the other Judges, granted the application.

**Vice-Chancellor Stuart.**

*Hextall v. Cheattle.* Dec. 15, 1852.

**REDEMPTION SUIT.—ATTENDANCE OF PLAINTIFF BEFORE EXAMINER TO BE CROSS-EXAMINED VIVA VOCE.**

*In a suit, where the usual order to redeem and for an account had been made, an order was made for the plaintiff to attend before one of the examiners to be cross-examined viva voce, as to the state of facts which he had*

*brought into the Master's office, supported by affidavit.*

THIS was a motion for leave to cross-examine *viva voce* before the Master or one of the examiners the plaintiff in this suit, in which the usual decree for redemption had been made, and for an account. A state of facts had been brought in by the plaintiff before the Master, supported by affidavit, and the question arose whether the Master had power to examine or cross-examine him since the passing of the recent Act.

*Wigram* and *Hitchcock* for the defendant in support; *Bacon* and *W. M. James* for the plaintiff, did not oppose.

The *Vice-Chancellor* directed the plaintiff to attend before one of the examiners to be cross-examined as asked.

*Martin v. Hadlow.* Dec. 18, 1852.

**EQUITY JURISDICTION IMPROVEMENT ACT. SALE OF REAL ESTATE.—INQUIRIES ON CLAIM PENDING.**

*Order for sale made under the 15 & 16 Vict. c. 86, s. 55, of real estate, devised on trust for sale and division amongst the petitioners, although inquiries were still pending before the Master in a claim.*

*R. W. E. Foster* appeared in support of this petition, on behalf of the parties beneficially interested, for an order to sell real estates which were devised on trust for sale and division of the proceeds amongst the testator's children, the present petitioners. It appeared that a reference had been made to the Master on a claim for the usual inquiries, which was still pending.

By s. 55 of the 15 & 16 Vict. c. 86, it is enacted, that "if after a suit shall have been instituted in the said Court in relation to any real estate, it shall appear to the Court that it will be necessary or expedient that the said real estate or any part thereof should be sold for the purposes of such suit, it shall be lawful for the said Court to direct the same to be sold at any time after the institution thereof, and such sale shall be as valid to all intents and purposes as if directed to be made by a decree or decretal order on the hearing of such cause."

The *Vice-Chancellor* granted the order as prayed.

**Court of Queen's Bench.**

*Catchpool v. Ambergate Railway Company.*  
Nov. 19, 1852.

**RAILWAY COMPANY.—OMISSION OF OFFICER TO REGISTER TRANSFER OF SHARES.—UNLAWFUL FORFEITURE FOR NON-PAYMENT OF CALL ON FORMER OWNER.**

*The plaintiff handed to the secretary of a railway company the deed of transfer of certain shares to be registered, but it appeared that this was omitted to be done, and the shares had been declared forfeited for nonpayment of calls made in respect of such shares upon the former owner: Held,*

*overruling a demurrer to the declaration, that the plaintiff was entitled to recover for such neglect to register and unlawful forfeiture of shares.*

THIS was a demurrer to the declaration in this action, which was brought to recover damages from the defendants for neglecting to register the plaintiff's name as a shareholder, and for unlawfully declaring the shares forfeited. It appeared that upon the shares being transferred to the plaintiff, he handed the deed of transfer to the secretary to be registered, and that a call was afterwards made on the former owner, and the shares had been declared forfeited upon non-payment of the same.

*Willes* in support of the demurrer; *Bramwell* contra.

The Court said, the defendants had been guilty of an omission in not registering the plaintiff's name as a shareholder, and for declaring the shares forfeited in consequence of the non-payment of calls which arose from the default of their secretary, and overruled the demurrer accordingly.

#### Common Pleas.

*Moore*, appellant; *Overseers of Carisbrooke*, respondents. Nov. 17, 1852.

REGISTRATION OF VOTERS.—SUFFICIENCY OF QUALIFICATION. — MORTGAGE.—INTEREST APPORTIONABLE AMONGST LAND CHARGED.

*J. S.* claimed to vote in respect of a qualification consisting of land of the yearly value of 5*l.* It appeared, however, it was mortgaged, together with other property of the annual value of 50*l.*, for 300*l.*, on which 15*l.* a year interest was payable: Held, affirming the decision of the revising barrister, that the qualification was sufficient, the interest being apportionable rateably amongst the property.

THIS was an appeal from the decision of the revising barrister retaining the name of *James Sanders* on the list of voters. It appeared that he claimed to vote in respect of a piece of freehold land called *Edward's Land*, in

*Carisbrooke Fields*, Isle of Wight, of the annual value of 5*l.*, and that it was mortgaged, with other land of the annual value of 50*l.*, for 300*l.* An objection was overruled, that the 15*l.* interest could not be apportioned rateably amongst the property, as each part was liable to the whole interest.

*Poulton* in support.

The Court dismissed the appeal, with costs.

#### Court of Exchequer.

*Henshaw v. Brice.* Nov. 23, 1852.

ACTION FOR DAMAGE CAUSED BY OCCUPIER OF GROUND FLOOR TO UPPER FLOORS OF HOUSE.—RIGHT TO REPAIR.—ALTERATIONS.

Held, discharging a rule for a new trial of an action, brought by the occupier of upper floors to recover for damage caused by the occupier of the ground floor of a house for improper alterations, that the defendant was entitled to repair when necessary, taking all proper precautions, and that he was not liable for any inevitable injury arising from so doing, but otherwise where he made unnecessary alterations.

THIS was a rule nisi for a new trial of this action which was brought to recover damages sustained by the plaintiff, who occupied the upper floors of a house, for injuries occasioned thereto by the improper alteration of the basement and ground floor by the defendant. On the trial before *Lord Campbell, C. J.*, the defendant obtained a verdict.

*Miller, S. L.*, and *Hayes* showed cause against the rule, which was supported by *Mellor* and *Prowett*.

*Cur. ad. vult.*

The Court said, the defendant, as owner of the lower floor, was bound so to manage his property as not to injure the upper floors, but he might repair it when necessary, taking all proper precautions to support the upper floors, and he was not liable for any inevitable injury arising from so doing. It was, however, otherwise in the case of unnecessary alterations, but as it appeared from the Judge's notes that the law had been properly left to the jury, the rule would be discharged.

### ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

#### LAW OF EVIDENCE.

##### ADMISSION OF DOCUMENTS.

*Before trial under Reg. Gen. Hil. 4, Wm. 4, c. 20.—Interlineation discovered after.*—A party who has been called upon in the ordinary form (*Reg. Gen. Hil. 4 Wm. 4, c. 20*, and *Form A.*) to admit a document before trial, and has done so, cannot, at the trial object to such document on the ground that it has an interlineation not accounted for by evidence, unless it appear that the interlineation was made after the admission. *Freeman v. Steggall*, 14 Q. B. 202.

##### ADMISSION.

*Reference of claim to arbitration, and that nothing is due.*—In an action for work and labour, to which the defendant pleads the general issue, a statement made by the plaintiff, that the claim which forms the subject of the action was referred to an arbitrator, who found by his award that nothing was due to the plaintiff, is evidence against the plaintiff under the issue raised by that plea. *Murray v. Gregory*, 5 Exch. R. 468.

##### ADMISSIONS.

*Undertaking to make relieved by Court.*—Th<sup>o</sup>

Court relieved a party from an undertaking to make an admission upon a trial at law, the law on the point having, since the undertaking, been placed in a state of uncertainty, by reason of conflicting decisions in different Courts. *Cocks v. Purday*, 12 Beav. 451.

#### ADMITTANCE TO COPYHOLD.

*Title of Court.*—In the entries in the Court-book of a manor, the proceedings at a Court were headed as held at a "Court Baron" of the manor. It appeared that this was the usual form of entry for Courts at which both freehold and customary tenants attended; and that admittances to the copyhold of the manor were granted at such Courts: *Held*, sufficient evidence that an admittance at the Court in question was made at a customary Court. *Doe dem Evans v. Walker*, 15 Q. B. 28.

#### AMBASSADOR.

*Domicile.*—A foreign ambassador *held*, under the circumstances, to have acquired an English domicile.

In 1819, a Sardinian came to England, and became attached to the Sardinian embassy. In 1821, he was dismissed, but he continued to reside 10 years in England. He was then for three years *Chargé d'Affaires* in London, and for three years minister in Holland. In 1837, he was appointed Envoy Extraordinary and Minister Plenipotentiary to England, and retained this office until his death in 1846: *Held*, upon the evidence of his declaration and acts, that he was domiciled in England. *Heath v. Samson*, 14 Beav. 441.

#### AMBIGUITY.

*Evidence to explain a contract unambiguous upon the face of it, not admissible.*—A contract for the sale of 30 bales of goats' wool at a certain price per pound, contained the following stipulation:—"Customary allowance for tare and draft, and to be paid for by cash in one month, less 5 per cent. discount:" *Held*, that the vendee was entitled to have the goods delivered to him immediately or within a reasonable time, but was not bound to pay for them until the expiration of the month.

*Held*, also, that, there being no ambiguity in the language of the contract, evidence was not admissible to show that, by the usage of the particular trade, vendors selling under such contracts were not bound to deliver the goods without payment. *Spartali v. Benecke*, 10 C. B. 212.

Cases cited in the judgment: *Webb v. Fairman*, 3 M. & W. 473; *Rugg v. Minett*, 11 East, 210; *Hinde v. Whitehouse*, 7 East, 558; *Chase v. Westmore*, 5 M. & S. 180; *Crawshaw v. Homfray*, 4 B. & Ald. 50; *Cowell v. Simpson*, 16 Ves. 275; *Adams v. Wordley*, 1 M. & W. 374; *Foster v. Jolly*, 1 C. M. & R. 703; *Free v. Hawkins*, 8 Taunt. 92; 1 J. B. Moore, 535; *Moseley v. Hanford*, 10 B. & C. 729; 5 M. & R. 607; *Hoare v. Graham*, 3 Campb. 57; *Rawson v. Walker*, 1 Stark. N. P. C. 361; *Webb v. Plummer*, 2 B. & Ald. 746; *Hutton v. Warren*, 1 M. & W. 466;

*Greaves v. Ashlin*, 3 Campb. 426; *Ford v. Yates*, 2 M. & G. 549; 2 Scott, N. R. 645; *Syers v. Jonas*, 2 Exch. R. 111.

#### ANSWER.

*Inaccuracy not wilful, no ground to reject it altogether.*—The existence of an error or an inaccuracy in an answer in the description of some document not in question, where there is no ground for imputing wilful falsehood to the defendant, is no reason for rejecting the oath of the defendant altogether. *Reid v. Langlois*, 2 H. & T. 59.

#### ATTORNEY.

*Subpoenaed to produce document received from client and refusing to do so.*—*Secondary evidence.*—Where a person, not a party to a suit, attends on a common subpoena, and is called as a witness, and refuses to permit the production of a document which his attorney has brought into Court, in obedience to a subpoena *duces tecum*, but which the latter also declines to produce; the plaintiff, having done everything that could be done to make apparent the impossibility of using the primary means of proof, is entitled to resort to secondary evidence of the contents, and is not precluded from so doing by his omission to serve the client with a subpoena *duces tecum*. *Newton v. Chaplin*, 10 C. B. 356.

Cases cited in the judgment: *Doe d. Locombe v. Clifford*, 2 Car. & K. 448; *Doe d. Gilbert v. Ross*, 7 M. & W. 102.

#### CO-DEFENDANTS.

*Where interests not identical with examining defendants.*—Two co-defendants were examined on behalf of defendants whose interests were not identical with their own: *Held*, that their testimony were admissible in evidence. *Daniell v. Daniell*, 3 De G. & S. 337.

#### COMMISSION TO EXAMINE WITNESSES.

1. *Waiver of irregularity in commission and in the order for it.*—A commission issued under Stat. 1 Wm. 4, c. 22, s. 4, at the instance of plaintiff, for the examination of witnesses in Ireland. Defendant did not join in the commission. Neither the order for a commission nor the commission specified the place of examination. By agreement between the attorneys, prior to the granting of the order, the examination was taken at a particular place in Ireland. Cross-interrogatories were administered on behalf of defendant; and on the return of the commission he obtained copies of the examinations. On the trial, documents, obtained under the commission were used by plaintiff, who obtained a verdict. On taxation, the Master allowed plaintiff the costs of the commission.

*Held*, on a rule to review his taxation, that the omission to specify the place of examination in the order was, at most, an irregularity, which was waived by defendant's conduct; and that the costs were properly allowed. *Howkins v. Baldwin*, 16 Q. B. 375.

2. *Oath of Commissioner dispensed with.*—

Where a commission issues for the examination of witnesses in a foreign country, the oath of the Commissioners may, under special circumstances, be dispensed with. *Boelen v. Melladeu*, 10 C. B. 898.

3. *Form of oath of witnesses in Denmark.*—By the law of Denmark, none but burgo-masters have power to administer oaths; and the mode of administering an oath to a witness, is, by causing him to hold up three fingers of his right hand, and declare that he will speak the truth. A commission having failed, for want of the observance of these formalities,—the Court, on payment of all costs, allowed a second commission to go, addressed to burgo-masters. *Boelen v. Melladeu*, 10 C. B. 898.

4. *Amendment of return.*—The return of a commission from Jamaica, which omitted to state that the Commissioners and their clerks had taken the oaths, ordered to be amended, and to be received in evidence, though, in addition, the signature of the Commissioners had not been affixed to the interrogatories. *Davis v. Barrett*, 14 Beav. 25.

Case cited : *Brydges v. Branfill*, 12 Sim. 334.

See *Witness*.

#### COMPETENCY.

*What amounts to waiver of witness's competency.*—The cross-examination of a defendant, tendered as a witness, is a waiver of his incompetency, where the objection must be assumed to have been known at the time of the cross-examination. *Triston v. Hardey*, 14 Beav. 21.

Case cited in the judgment : *Ellis v. Deane*, Beatty, 5.

#### DEFENDANT.

*Evidence for co-defendant.*—*Stat. 6 & 7 Vict. c. 85.*—The evidence of a defendant in favour of a co-defendant is inadmissible under the 6 & 7 Vict. c. 85, if it proves the case of the witness himself. *Triston v. Hardey*, 14 Beav. 21.

#### DISCREDITING OWN WITNESS.

*Denial of material fact.*—*Relevancy to issue.*—Although the general rule is, that, on the trial of a cause, a party shall not discredit his own witness, yet, if the witness unexpectedly gives adverse evidence, the party may ask him if he has not, on a particular occasion, made a contrary statement. And the question and answer may be stated by the Judge to the jury with the rest of the evidence; the Judge cautioning them not to infer, merely from the question, that the fact suggested by it is true.

*Quere*, whether, in such case, the party may contradict the witness by evidence as to such former statement.

If a witness called in support of a case unexpectedly gives evidence in opposition to it, the party calling him may go on to prove the case by other witnesses, and it will be no objection to the proof of any relevant fact that the statement of it contradicts, and thereby indirectly discredits, the first witness.

The fact is relevant, though it be not part of the transactions on which the issue turns, if the truth or falsehood of it may fairly influ-

ence the belief of the jury as to the whole case. Thus, if the plaintiff's first witness denies a material fact, and states that persons connected with the plaintiff have offered him money to assert it, the plaintiff may call those persons, not only to prove the fact, but to disprove the attempt at subornation.

In an action for assaulting, and thereby injuring, the plaintiff, if the plaintiff's witness deposes that plaintiff, in conversation, ascribed the injury to an accident, the plaintiff may afterwards prove that, in fact, no such accident occurred. *Melhuish v. Collier*, 15 Q. B. 878.

Cases cited in the judgment : *Holdsworth v. Mayor of Dartmouth*, 2 M. & Rob. 153; *Wright v. Beckett*, 1 M. & Rob. 414; *Winter v. Butt*, 2 M. & Rob. 337.

#### INSPECTION OF DOCUMENTS.

14 & 15 Vict. c. 99, s. 6.—*Where deeds relate to party's title.*—The assignee of certain premises for the residue of a term of years, became seised in fee of other premises immediately adjoining, and demised both to R. and S. She subsequently assigned her interest in the first-mentioned premises to the defendant, and conveyed to him the freehold premises. After the determination of the term granted to R. and S., defendant occupied the leasehold as well as the freehold premises. Upon the determination of the first-mentioned term of years, the reversioner of the premises comprised in it brought ejectment for a parcel of land, contending that it was part of the lands comprised in the term of years, and alleging that R. and S., and afterwards the defendant, had during their occupations, obliterated the boundaries of the freehold and leasehold land, and had encroached on the latter.

Upon a rule under the 14 & 15 Vict. c. 99, s. 6, to inspect documents, supported by an affidavit stating the above facts, and alleging that an inspection of the deeds of assignment and of conveyance to the defendant of both premises would enable the lessor of the plaintiff to prove his title to the parcel in question :

*Held*, that the lessor of the plaintiff was entitled to inspect the assignment of the term, but not the deed conveying the freehold hereditaments.

*Held*, also, that the lessor of the plaintiff might, even independently of the 14 & 15 Vict. c. 99, s. 6, upon an affidavit of the loss or non-existence of the counterpart, inspect the deed creating the term. *Doe dem Avery v. Langford*, 1 L. & M. 37.

Case cited in the judgment : *Bolton v. Mayor, &c., of Liverpool*, 1 Myl. & K. 88.

#### INSURANCE.

*Total loss.*—*Possibility of saving ship.*—*Drunkenness of captain.*—*Copy of former deposition.*—On an issue, between the owner of a ship and the insurer, whether the ship had been totally lost, it appeared that she had gone on shore, and, when on shore, had been sold by the captain to a party who succeeded in getting her off. The defendant's case being that, if a good judgment had been exercised, total

one might have been avoided: *Held*, that he might give evidence that the captain, within a short time before the vessel sailed was addicted to drunkenness.

On a commission to examine witnesses, a witness, after giving oral evidence, put in a document which he called a "legalised copy" of a deposition which he stated himself to have made 18 months earlier, before the British consul at the foreign port near which the loss occurred, and which document purported to contain evidence of his opinion as to the circumstances of the vessel at the time of the loss; and the witness stated that he now confirmed such deposition, and that any discrepancy between that and his present testimony must be attributed to the lapse of time: *Held*, that the document was not admissible in evidence. *Alcock v. Royal Exchange Assurance Company*, 13 Q. B. 292.

Cases cited in the judgment: *Attorney-General v. Hitchcock*, 1 Exch. R. 91; *Fanny and Elmira*, Edwards's Adm. Rep. 117; *Masburn v. Leckie*, Abbott on Shipping, p. 10, n. g.; *Freeman v. East India Company*, 5 B. & Ald. 617; *Idle v. Royal Exchange Assurance Company*, 3 Taunt. 755; *Read v. Bonham*, 3 Br. & B. 147; *Somes v. Sugrue*, 4 Car. & P. 276; *Doyle v. Dallas*, 1 Moo. & R. 48.

#### INTERESTED DEPONENT.

*Credit to be given to.*—It is not of necessity to disbelieve or to attribute error to an affidavit, because the deponent is interested, and because a witness not interested deposes in a different manner; and the Court, believing the whole of the affidavit of an interested deponent, decided the case in his favour, though the testimony of a witness not interested was different. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Hall*, 3 De G. & S. 214.

#### JOINT-STOCK COMPANY.

*Character sustained by directors.*—Evidence which, in a suit by some on behalf of the others of the members of a joint-stock company, is necessary to show that the plaintiffs are the managing directors of the company, and that, in such character, they represent the company within the rule of the Court, which allows some members of a partnership to represent others who are absent.

Case in which the Court will, at the hearing, give the plaintiffs in such a suit the opportunity of supplying the deficiency of the evidence as to the character which they sustain. *Clay v. Rufford*, 8 Hare, 281.

#### PARTNERSHIP.

*Number of persons forming partnership.*—*Seing on behalf, &c.*—Evidence of the number of persons constituting a partnership, for the purpose of proving that they are so numerous as to bring the case within the rule of the Court allowing a few partners to sue on behalf of themselves and others. *Clay v. Rufford*, 8 Hare, 286.

#### PRELIMINARY AGREEMENT.

*To explain subsequent deed.*—On an issue

taken upon *liberum tenementum*, the question being, whether the *locus in quo* was parcel or no parcel of an estate purchased by and conveyed to an ancestor of the alleged freeholder, an agreement preliminary to the conveyance, and in which the *locus in quo* was expressly named as part of the land to be sold, is not admissible evidence for the purpose of showing what was conveyed. *Williams v. Morgan*, 15 Q. B. 782.

#### PRESUMPTION.

*Policy of assurance.*—Where A. effects a policy, in his own name, upon the life of B., declaring he is interested in B.'s life, such policy, *prima facie*, belongs to A., and the mere proof that some of the premiums were paid by B., does not rebut that presumption. *Tristram v. Hardey*, 14 Beav. 232.

#### PRODUCTION OF DOCUMENTS.

*Stamped copy, where original lost.*—*Power of Judge at Chambers to order admission of evidence at Nisi Prius.*—In an action founded upon a document in which both parties have an interest, and which was in the possession of one, but is said by him to have been lost, a Judge cannot order that, if such party does not produce the document to be stamped, a copy duly stamped shall be read in evidence at the trial, and that the original shall not then be produced on the other side, nor objection taken to the want of a stamp on the original.

The Court rescinded such an order, after it had been enforced by the Judge at Nisi Prius, and made a rule of Court. *Rankin v. Hamilton*, 15 Q. B. 187.

Cases cited in the judgment: *Legh v. Legh*, 1 B. & P. 447; *Iunell v. Newman*, 4 B. & Ald. 419; *Alner v. George*, 1 Comph. 392; *Travis v. Collins*, 2 C. & J. 625; 2 Tyr. 726; *Bousfield v. Godfrey*, 5 Bing. 418.

#### PROCEIN AMY.

*Stat. 6 & 7 Vict. c. 85.*—*Party named on record.*—A *prochein amy*, suing on behalf of an infant, is not precluded from giving evidence by Stat. 6 & 7 Vict. c. 85, s. 1, as a party individually named on the record. *Melhuish v. Collier*, 15 Q. B. 878.

#### PUBLIC DOCUMENT.

*Master's report of burthen of ship.*—*Custom House certificate of register.*—The master of a foreign vessel arriving in the port of London, delivered to the Custom House officers a report of the burthen of his ship, and the number of his crew; and it was filed at the Custom House: *Held*, that the provisions of Stat. 8 & 9 Vict. c. 86, ss. 2, 7, 18, did not give this the character of a public document so as to make it evidence of the burthen of the ship.

A certificate was produced from the Custom House, where it had been filed, signed by a party who certified that he had measured the vessel, and stated the amount of the tonnage.

*Held* (it not being shown that this was an act prescribed by Statute), that the certificate could not be received in evidence as a public document to prove the burthen of the ship. *Huntley v. Donovan*, 15 Q. B. 96.

## REPUTATION.

1. *Right of common.*—*Verdict in former action.*—*Semble*, that, on an issue whether the occupier of close *T.* had, as appurtenant to it, right of common in a tract called *M.*, the party asserting such right cannot give in evidence the verdict in an action between strangers to the depending suit, where the issue was, whether the occupier of *B.*, another close belonging to the owner of *T.*, had a right of common in *M.*, and the jury found for the commoner. *Williams v. Morgan*, 15 Q. B. 782.

2. *Boundary of waste.*—*Manor.*—On an issue, whether close *C.* was or was not plaintiff's close, the following evidence was rejected :—

That the close was in the manor of *O.* : and plaintiff, by lease from the lord, was possessed of the manor and all the common and waste lands within the same : that *M.* was immemorially common and waste of and in the manor, and of great extent : that, adjoining to and surrounding *M.*, and within the manor, were and immemorially had been "very many distinct messuages, lands, and tenements, severally held of the same manor by several tenants thereof, respectively, which said tenants, for the time being, of the said messuages," &c., "respectively had, in respect thereof, severally and respectively, always had, exercised and enjoyed, and been entitled to have," &c., "rights of common for all their commenable cattle in and upon and throughout *M.*;" and that, *ante litem motam*, certain of such tenants, deceased, well acquainted with *M.* and its neighbourhood, and the manor, and who "as such tenants," had always had, &c., and been entitled to have, &c., such rights of common, did, while they were such tenants, and were in the exercise, &c., and so entitled, declare that *C.* was parcel of *M.*, and waste of the manor.

On bill of exceptions, stating as above : *Held*, that the evidence was rightly rejected, for that the rights to which the declarations referred were not of a public nature.

But *Held*, that the evidence was not the less admissible because no evidence had been been offered of actual exercise of the right of common on the *locus in quo* :

And that there was no objection to it on the ground that the parties making the declaration had not competent knowledge, or were interested. *Lord Dunraven v. Llewellyn*, 15 Q. B. 791.

## RUMOUR.

*Slander.*—*Evidence of rumour in mitigation of damages.*—Action for words imputing unnatural practices. The declaration alleged, at the conclusion, that by means of the committing of the grievances plaintiff had been injured in his good name, and brought into public infamy, and was shunned by divers persons (not named). Plea, not guilty.

*Held*, that, upon this issue, defendant could not ask a witness whether he had heard that the plaintiff was addicted to such practices ; the question being general, and not confined to reports existing at the time of the slander.

*Quere*, whether the question, if so confined, could have been put. *Thompson v. Nye*, 16 Q. B. 175.

Case cited in the judgment : *Jones v. Stevens*, 11 Price, 235.

## SECONDARY EVIDENCE.

*Of contents of written document, when admissible.*—Where a written document is in the possession of a witness who is not compellable to produce it, and he refuses to do so, secondary evidence of the contents is admissible. *Newton v. Chaplin*, 10 C. B. 356.

See *Attorney*.

## SPECIFIC GIFT.

*Evidence of state of property admissible.*—Where a gift is *prima facie* specific, evidence of the state of the property at the date of the will is admissible. *Innes v. Sayer*, 3 M'N. & G. 606.

Cases cited in the judgment : *Shuttleworth v. Greaves*, 4 M'yl. & C. 37 ; *Mackinley v. Sison*, 8 Sim. 561.

## STAMP.

*Acknowledgment of payment.*—*When a receipt stamp is necessary.*—Debt for iron-work sold and delivered. Plea : payment. Defendant, in support of the plea, offered in evidence an unstamped document signed by plaintiffs, in these words :—"Memorandum, That any demand we may have against *W.*" (defendant) "for iron-work, &c., is this day settled and discharged in consideration of services rendered by him to us. N. B. Particulars of our account shall be delivered with a stamped receipt."

*Held*, that the document was not admissible for this purpose without a receipt stamp. *Livingstone v. Whiting*, 15 Q. B. 722.

## WITNESS ABROAD.

*Examination of, under a mandamus.*—Distance, and the smallness of the amount of the plaintiff's claim, form no ground for refusing a writ in the nature of a mandamus for the examination of witnesses abroad, on behalf of the defendant, under the 1 Wm. 4, c. 22. *Dye v. Bennett*, 9 C. B. 281.

See *Commission to Examine Witnesses*.

## LAW OF COSTS.

## ADMINISTRATION SUITS.

*Staying proceedings.*—A creditor's suit against a personal representative for the administration of a testator's estate, proceeded to replication, when a decree was obtained, in another creditor's suit, against the same personal representative for the same object. After the defendant had given the plaintiff in the first suit notice of the decree, the plaintiff threatened to proceed ; and thereupon the defendant, upon a notice of motion, intitled only in the former cause, asked that the proceedings might be stayed. The Court made an order in both suits, granting the injunction, and giving the restrained plaintiff liberty to tax his costs of the first suit and on the motion, and to go in

and prove his debt, and such costs in the second suit, but declined to direct that the costs should be paid out of the first assets. *Ladbroke v. Sloane*, 3 De G. & S. 291.

## AMENDMENT.

**Dismissal for want of prosecution.**—*Requiring answer.*—Where a plaintiff amended his bill, and thereby required an answer to the amendments from four of the defendants who had answered, and to the original and amended bill from two defendants who had not answered, and from defendants newly added, but did not serve on the four first-mentioned defendants any subpoena to answer the amended bill: *Held*, that the plaintiff ought to have paid 20s. costs, if he required those defendants to answer the amendments, and ought to have served them with a subpoena, or filed a replication, and that his not having taken either of these steps, entitled those defendants to move to dismiss for want of prosecution, under the 39th Article of the 16th Rule of May, 1845. *Raistrick v. Elsworth*, 2 De G. & S. 95.

Cases cited: *Cooke v. Davis*, T. & R. 309; *Bramston v. Carter*, 2 Sim. 458.

## APPEAL.

1. A creditor's bill was filed after notice of a decree in a simple administration suit, by one of the next of kin of the intestate, but the decree was at that time imperfect in not containing the usual preliminary inquiries: the frame of the creditor's suit was also different in making the heir-at-law a party, and in containing charges as to real estate, and as to the destruction of documents. The creditor's suit having been brought to a hearing, the Vice-Chancellor made an order directing the plaintiff to pay a stated sum to the heir-at-law in lieu of costs, and ordered the administratrix to pay the plaintiff's costs of suit: *Held*, that inasmuch as the creditor might have obtained all the relief to which she was entitled in the former suit, the bill ought to have been dismissed with costs; and that, under the circumstances, the appeal to the Lord Chancellor did not fall within the rule precluding an appeal for costs. *Menzies v. Connor*, 3 M'N. & G. 648.

Cases cited in the judgment: *Owen v. Griffith*, Amb. 521; *Angell v. Davis*, 4 Myl. & Cr. 360; *Chappell v. Purday*, 2 Phill. 227.

2. **Inadvertent defect in decree.**—When a decree is affirmed upon the general merits of the case, an objection founded on an obvious inadvertency in such decree, and which might have been taken in the Court below, ought not to affect the costs of the appeal, if taken for the first time in the appellate Court. *Smith v. Pincombe*, 3 M'N. & G. 653.

## APPEAL FROM MASTER.

**New facts.**—Upon a motion, by way of appeal from the Master's decision, refusing to enlarge publication, the Court received in evidence new facts not before the Master, on which the Court directed the publication to stand enlarged; but, as the order was ob-

tained upon materials which were not before the Master, the appellant was ordered to pay the costs of the motion. *James v. Grissell*, 3 De G. & S. 290.

## APPEAL FROM SESSIONS.

**Costs as between party and party.**—Where upon appeal to the quarter sessions under the 6 & 7 Vict. c. 36, a case is stated for the opinion of one of the Superior Courts, under the 12 & 13 Vict. c. 45, s. 11, costs are taxed as between party and party. *Earl of Clarendon v. Rector, &c., of St. James's, Westminster*, 10 C. B. 806.

## AUCTIONEER.

**Action against for deposits.**—*Security for costs.*—An auctioneer was employed to sell land by auction: the purchaser of a lot paid a deposit, but, not being satisfied with the title, refused to complete the purchase, and sued the auctioneer for the deposit: the vendor gave the defendant notice to hold the money for her as forfeited. The defendant applied to have the vendor made defendant.

The Court, the solvency of the vendor appearing doubtful, made the rule absolute, on the money being brought into Court and security for costs being given to plaintiff; but refused to order that the costs of the original defendant should be paid out of the money. *Deller v. Prickett*, 15 Q. B. 1081.

## CERTIORARI.

5 & 6 Wm. and M. c. 11, s. 3. — **Party "grieved."**—*Indictment for perjury.*—The defendant having committed perjury, upon a reference to a Master in Chancery to ascertain the amount of A.'s estate, in a suit brought by A.'s executors, was prosecuted by the executors, and convicted.

*Held*, that they were entitled to costs as parties "grieved or injured," within the meaning of 5 & 6 Wm. and M., c. 11, s. 3. *Regina v. Major*, 1 L. & M. 68.

## CONTRIBUTORY.

This Court will make the usual order for winding up the affairs of a company on the petition of a plaintiff in a suit against the directors for a similar object, without requiring the petitioner to pay the costs of the suit, leaving the question of the costs of the suit to be considered in the suit. *In re Bastenne Bitumen Company*, 3 De G. & S. 265.

## DISMISSING BILL.

**On offer of relief specifically sought by bill.**—A defendant, offering the plaintiff all the relief specifically sought by his bill, moved to dismiss the bill without costs, or that the plaintiff might apply respecting them. The plaintiff then insisted on a further demand, which might be had under the prayer for general relief or by amendment. The Court refused the motion with costs, but intimated, that this proceeding must be considered at the hearing.

The decision in *Sivell v. Abraham*, 8 Beav. 598, adhered to. *Hennet v. Luard*, 12 Beav. 479.



## FEME COVERT.

*Next friend.*—Petition by a *feme covert* in a suit, not naming a next friend, directed to be amended by inserting a next friend. *Howard v. Prince*, 14 Beav. 28.

## FRAUD.

*Unsupported charges.*—A bill contained charges of fraud, which were neither supported nor repelled by evidence; but, inasmuch as the costs were not increased by such charges, *held*, that the costs of the suit ought not to be affected thereby. *Stamiland v. Willott*, 3 M. & G. 664.

## ISSUES OF FACT.

*Found for the plaintiff, where an issue in law, going to the whole cause of action, is found for the defendant.*—A plaintiff may be entitled, under the Statute 4 Ann. c. 16, s. 5, to the costs of issues of fact found for him, even though, upon the whole record, he appears to have had no cause of action.

To assumpsit upon certain bills of exchange, with a count for goods sold and delivered, money paid, and interest, and a count upon an account stated, the defendant pleaded 16 pleas, to one of which (*going to the whole cause of action*) there was a demurrer. Upon the trial, all the issues of fact were found for the plaintiff; and, upon the argument of the demurrer, the judgment was for the defendant: *Held*, contrary to *Partridge v. Gardner* and *Howell v. Rodbard*, 4 Exch. 303, 309, and affirming *Bird v. Higginson*, 5 Ad. & E. 83; 6 N. & M. 799, and *Clarke v. Allatt*, ante, vol. iv., 335, that the plaintiff was entitled to the costs of the issues of fact, though the defendant had the general costs of the cause. *Callander v. Howard*, 10 C. B. 302.

## OFFICER OF THE COURT.

*Fee Fund.*—Order made for the payment out of the Sutors' Fee Fund Account of costs incurred by an officer of the Court in defending legal proceedings instituted against him in consequence of the performance of his duties. *In re Sutors' Fee Fund, ex parte Allen*, 3 M. & G. 360.

## PAYMENT OF MONEY INTO COURT.

Debt for work and labour. Pleas—To the whole declaration except as to 10*l.*, parcel, &c., never indebted: As to 10*l.*, other parcel, &c., payment before action: As to the 10*l.* excepted from the first plea, payment into Court of 10*l.* 1*s.* in the ordinary form.

Replication, joining issue on the first plea, traversing the second, on which traverse issue was joined, accepting the money paid into Court, and praying judgment for plaintiff's costs in respect of that.

A verdict was found for plaintiff on never indebted to the extent of 10*l.*, and for defendant on the plea of payment, so that plaintiff recovered nothing beyond the money paid into Court. On a rule to review the Master's taxation of costs:

*Held*, that plaintiff was entitled to the costs as to the causes of action relating to the 10*l.*

paid into Court, up to and including the payment into Court. *Rumbelow v. Whalley*, 16 Q. B. 397.

Cases cited in the judgment: *Harrison v. Watt*, 16 M. & W. 316; *Goode v. Goldsmith*, 2 M. & W. 202; *McLean v. Phillips*, 7 C. B. 817.

## RIGHT TO APPEAR.

In a case where the parties were very numerous, and the expenses of attending taking the accounts very great, an application, *sub decree*, to exclude a number of parties interested in the residue from attending the taking such accounts and the further proceedings, except at their own expense, was refused. *Day v. Croft*, 14 Beav. 29.

## RULE OF COURT.

*Rescinding part as to costs where disobedience denied.*—A Judge's order was, upon an affidavit that it had been served and disobeyed, made a rule of Court; and it was made part of such rule, in pursuance of Reg. Gen., 27th May, 1840, that the costs of making the order a rule of Court should be paid by the party against whom the order was made.

The Court, upon an affidavit showing that there had been no disobedience, rescinded so much of the rule as related to the costs, although no demand of them had been made. *Ex parte Farrant, in re Goderich*, 1 L. & M. 64.

## TAXATION.

*Costs of cross-interrogatories.*—*Mixed witness.*—*Costs of instructing witness.*—Assumpsit for work and labour. Pleas, the general issue and payment. The verdict being for the plaintiff on the first, and for the defendant on the second issue: *Held*, that the Master rightly disallowed the costs of cross-examining upon interrogatories a witness whose examination in chief proved the first issue, and whose cross-examination was material only in reducing the damages on that issue, but did not affect the second issue.

*Held*, also, that the Master properly disallowed the defendant such part of the expenses of witnesses as were incurred in qualifying them to give evidence; such as journeys and surveys to enable them to speak to the sufficiency of the work done. *Gravatt v. Attwood*, 1 L. & M. 27.

## TAXATION, COSTS OF.

*Qualifying witness to give evidence.*—Witnesses were brought to town some days before the trial, for the purpose of enabling them to identify the defendant: *Held*, that the costs of their attendance were rightly disallowed, as being in effect costs incurred in qualifying them to give evidence. *Small v. Batho*, 1 L. & M. 43.

## TRAVELLING EXPENSES OF WITNESSES.

The Master taxing costs ought not to allow for the travelling expenses of witnesses a greater amount than is reasonable, though it does not exceed 1*s.* a mile, and though it has been actually paid by the party bringing them. *Hunter v. Liddell*, 16 Q. B. 402.

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SATURDAY, JANUARY 15, 1853.

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## COMMENCEMENT OF HILARY TERM.

### BUSINESS OF THE COURTS.

HILARY TERM has commenced under circumstances not undeserving of a passing notice.

In three of the Equity Courts the suitor and practitioner find a change of Judges in the short interval since the Courts rose for the Christmas holidays. There is a new Lord Chancellor, a new Lord Justice, and a new Vice-Chancellor. The Lord Chancellor Cranworth and the Lord Justice Sir George Turner, though *new* in their present offices, are not without judicial experience, and the only untried Judge is Vice-Chancellor Sir W. Page Wood. His position at the Equity Bar, and the ability with which he filled the office of Solicitor-General under Lord John Russell's Government, seem in the opinion of the Profession and of the Public, to have fully justified the appointment of Sir W. Page Wood as a Vice-Chancellor. Sir George Turner's appointment, in the first instance, to judicial office was made without any reference to political predilections, and his promotion to his present office can only be regarded as an acknowledgment of judicial capacity equally honourable to the Government and the object of their choice.

In the Common Law Courts, the Bench has not presented any change since the retirement of Sir James Patteson and the appointment of Mr. Justice Crompton. As a consequence of a change of Ministry, Sir A. Cockburn takes his place at the head of the Bar, instead of Sir F. Thesiger.

The customary audience—we believe it was a misnomer to dignify it with the name of a breakfast—given by the Lord Chancellor to the Judges and the leading mem-

bers of the Bar, at the commencement of every Term, was restricted, during the Chancellorship of Lord Cottenham, to the opening days of the two Terms following the Spring and Autumn Circuits, namely, Easter and Michaelmas Terms. Lord Cranworth appears to have been desirous of meeting the heads of the Legal Profession under his own roof, upon the very earliest opportunity after his recent elevation to the Chancellorship, and wisely and with universal concurrence disregarded the modern innovation upon the "ancient custom," by receiving the Judges, and all the notabilities of the Bar, at his house in Upper Brook Street, on Tuesday last. His Levee is said to have been remarkably well attended.

Lord Cranworth, upon taking his seat in the Court of Chancery, found—what we believe to have been unprecedented within living memory—a paper disclosing no arrears! This extraordinary event, though well deserving of record, it must be remembered, is not to be ascribed wholly to the exemplary diligence and industry of Lord Cranworth's immediate and distinguished predecessor, but in great measure to the creation of a Court of Appeal, under the Act 14 & 15 Vict. c. 83 (which has been so ably presided over by Lord Justice Knight Bruce, conjointly with Lord Cranworth), and by the arrangements made under that Act for lightening the pressure of judicial business, which previously had exclusively devolved upon the individual having the custody of the Great Seal. As we have already had occasion to remark, for this great, and as it has turned out, most successful experiment, the public is mainly indebted to Lord Chancellor Truro.

In the Courts of the Lords Justices, the Master of the Rolls, and the Vice-Chancellors respectively, the Term papers do not exhibit any formidable list of arrears, but

enough appears to satisfy the most sceptical that there is no excess of judicial strength, and that the business ready for hearing could not be satisfactorily disposed of with a less number of Judges, even if all the Equity Judges should be able, as at present, to sit from day to day in their respective Courts.

In the Common Law Courts, the only arrears, deserving of notice, at the commencement of the Term, consisted of Rules for New Trials granted during the last Term, and which, by reason of the period at which they were moved, could not be conveniently heard before the present Term. The Circuits, and not the Sittings in London and Middlesex, yield the largest crop of new trials, and as the applications for rules arising from the last Circuits have been already moved, the number of such rules will not be materially augmented during the present Term, and the Courts will have little to do beyond disposing of the rules already granted and waiting for hearing. It is quite clear, that if the Common Law Judges desire it, at the close of the present Term, there need not be a single rule of any description remaining for hearing.

Thus, the complaint, often well founded, arising from the delay of the hearing of causes in the Superior Courts, has been in a great degree removed by the operation of recent enactments. The remedy for this grievance would be complete in the Common Law Courts, if the Circuits could be so arranged as to afford an opportunity for the speedy trial of causes in which the venue arises in the country. Under the existing arrangement, it is possible, and indeed constantly occurs, that although litigant parties are ready and willing to try their causes in the month of August, the opportunity is not afforded them until the month of March following, an interval of nearly seven months! This is a real practical grievance, to which the attention of law reformers cannot be too soon directed.

Another grievance—one, perhaps, more generally as well as more severely felt, is the expense of legal proceedings, arising from what are called "office fees." As we have already had occasion to observe, according to the new scale introduced in the Common Law Courts, whilst a few fees have been abolished, the greater number have been increased, so that the suitor, or his attorney on his behalf, is compelled to pay, in the aggregate, more than he was

required to do before those changes were made in the Court procedure, the chief recommendation of which was the promised reduction of expense.

The present Ministry, like their predecessors, are pledged to carry out the necessary measures for completing the reform of the practice and procedure of the Superior Courts of Law and Equity. The sincerity of their professions will be best tested, by the spirit in which they deal with the question, *how are the fees now levied upon the suitors to be dispensed with?* The late Lord Langdale, and more recently Lord St. Leonards, distinctly laid down the principle, that the expense of administering justice should be paid out of the national funds and not taken from the pockets of the suitors, although when the property of suitors was to be administered, they might be fairly called upon to pay the expenses incidental to its administration. The complete adoption of this principle, the soundness of which is now all but universally admitted, ought to precede the adoption of all speculative reforms. It is at once safe and practical, and we trust will not be postponed in order to afford the opportunity for introducing experimental changes, which, however specious, must be to a great degree uncertain in their operation.

#### CONSOLIDATION AND AMENDMENT OF THE COMMON LAW RULES.

THE great event of the Term in the Common Law Courts has been the promulgation of a body of new Rules of Practice, annulling all former Rules of Court, except as regards proceedings heretofore taken. The number of the Rules so promulgated, and to which all the Common Law Judges are understood to have given their sanction, is 176, and, as might be expected, are, as to the largest proportion, a repetition of practical Regulations already in existence. Some of the old Rules, however, are materially modified, and adapted to the altered practice under the Common Law Procedure Act, and there are some regulations entirely novel.

The subject-matter of the new Rules is thus analytically stated in the Table of Contents prefixed to the authorised copy:—

Repeal of all existing rules of practice and making of fresh rules.

Writ of summons.

Appearance.

Attorney and guardian.

Joinder of parties.  
 Pleadings.  
 Payment of money into Court.  
 Demurrer.  
 Venue, change of.  
 Particulars of demand or set-off.  
 Security for costs.  
 Discontinuance.  
 Staying proceedings.  
 Cognovit; warrant of attorney; Judge's order for judgment.  
 Evidence; admission and inspection of documents.  
 Trial. Notice of trial and of inquiry.  
 Jury; view.  
 New trial; motions in arrest of judgment and judgment *non obstante veredicto*.  
 Judgment.  
 Costs; setting-off damages and costs.  
 Error.  
 Execution.  
 Revivor and *scire facias*.  
*Audita querela*.  
 Entry of satisfaction on roll.  
 Bailable proceedings; bail, and bail in error.  
 Ejectment.  
 Causes removed from inferior Courts.  
 Penal actions, compounding of.  
 Paupers, actions by.  
 Prisoners, and proceedings against.  
 Sheriffs; rules to return writs or bring in the body.  
 Irregularity, setting aside proceedings for.  
 Affidavits.  
 Rules, summonses, and orders.  
 Notices, service of, and of rules, pleadings, &c.  
 Attachment.  
 Award and annuities.  
 Miscellaneous.  
 Forms of proceedings.

The great length to which the Rules and the Schedule of Forms extends has induced us, on this important occasion (especially as the Rules come into *immediate* operation), to publish a double Number, for the purpose of laying them before our readers *in extenso*, and the earliest opportunity will be taken of pointing out those which are altogether new. (See pp. 195-210, *post*).

It has excited general observation, and seems to be complained of, that the new Rules come into *immediate* operation, instead of allowing a reasonable interval for the practitioners to become acquainted with the intentions of the Judges as to the proposed alterations in practice. It was announced by Mr. Baron Alderson, from the Bench of the Court of Exchequer, on Wednesday last, that the new Rules were in operation on that day, when, in point of fact, the Rules were not in print, and no persons but the Judges and the officers of the Court had seen them.

It must be remarked, however, that the Judges who have to carry these comprehensive changes in the procedure of the Courts into effect are placed in great difficulty. The Statutes must be obeyed, whether time be allowed, or not, to prepare the proper machinery. "Most haste, least speed." Our reformers are not always practical men. On one great point all are agreed, that it will be peculiarly advantageous thus to have the entire Code of Practice in one small volume.

We may add that on the first day of Term, Lord Campbell said, he had the satisfaction to announce, for the information of the Bar and the Public, that the Judges had this day signed a body of new rules for regulating the *practice* of the three Superior Courts of Common Law in Westminster Hall. The plan adopted, and which he hoped would be generally approved of, was to abolish all the written rules of practice from the earliest times down to the present, and in that way to make a *tabula rasa* for the new practice. The rules would be equally applicable to all the three Superior Courts, and were intended to establish an uniformity of practice, so far at least as the Judges had now the power in themselves to establish it.

His Lordship also said, there was another body of rules which the Judges had not the power, *proprio vigore*, by their Common Law authority, to establish,—viz., those which related to *pleading*, but objections to the existing rules they had endeavoured to obviate by certain other rules, which they had made under the authority of recent Acts of Parliament. Under the provisions of these Acts, the Judges had done all they could to render the administration of justice speedy and economical; but before these rules could come into operation they must be laid before the two Houses of Parliament, and on the expiration of three months, unless disapproved of by either House of Parliament, they would come into operation, and he hoped that they would then be found materially to improve the administration of justice.

These rules were very numerous, and, strictly speaking, they ought to be read in Court, but he thought it would be unnecessary to do so at this time, as the rules would be printed and ready for all who desired to have them on the morrow.

In addition to these General Rules of Practice, the Judges have under their consideration a series of *Directions to the Taxing Officers*, comprising a Scale of Charges to be allowed attorneys on the taxation of their costs.

The rules for the examination, admission, and re-admission of attorneys, and the taking out and renewal of their certificates, will also be consolidated and amended. These are distinct from the Rules of Practice and Pleading.

## LAW OF ATTORNEYS.

### COSTS OF A SOLICITOR ACTING AS ASSIGNEE IN BANKRUPTCY.

IN a case decided some time ago, but only recently reported,<sup>1</sup> it was held that the assignee of a bankrupt, who was the petitioning creditor and had acted as Solicitor to the fiat, was entitled to charge for his clerks' time in the business of the estate as costs out of pocket, though the solicitor himself could make no profit.

The assignee, a solicitor, had been the petitioning creditor,—the bankrupt being indebted to him on mortgage, and also in respect of a bill of costs. The accounts of the assignee had been audited and allowances made to him which were now objected to, on the ground that he was only entitled to the items which were for or in respect of money paid out of pocket by him. Dividends, amounting to 10s. in the pound, had been already paid to the creditors, who, with the exception of the assignee, had agreed to accept the remaining 10s. in the pound without requiring interest, and that thereupon the fiat should be annulled. The accounts were directed to be re-audited, and the case came on upon the Commissioner's certificate:—the principal question being, whether the Commissioner ought to have allowed the assignee anything for the services of his clerks.

The *Vice-Chancellor* said, "I consider the inference to be just and unavoidable, that a paid clerk or paid clerks of this solicitor, has or have been employed for the purposes of the estate, and to that extent labour and skill, for which the solicitor has paid, have been employed for the benefit of others. I

am of opinion, that an order ought not to be made against the solicitor for refunding that which he has received or which has been allowed to him, without making an allowance as nearly approaching to what is fit and correct (without including any profit) as possible, in respect of the labour so taken from him for the benefit of others. An attempt must be made to ascertain it. At present, as I understand, nothing has been allowed him in that respect. And I think it very likely, that if I had been in the place of the Commissioner, I should have thought that I could not under this reference do it, but should have left it to another jurisdiction. It is scarcely possible that it can be done with exactness, but as near an approach as possible must be made. Perhaps the parties can agree on a sum; if not, I must send the matter back to the Commissioner for an inquiry,—the language of which will require some consideration."

The parties, after some negotiation, agreed on the amount to be allowed, with a specific sum for the costs of the petition.

### PRIVILEGED COMMUNICATION.

IN a suit on behalf of an infant as the next of kin of an intestate, a motion was made to restrain a solicitor from acting as solicitor to the next friend of the infant, on the ground that he had acted as solicitor to one of the defendants, the administratrix. It was contended, on the authority of *Daniel v. Clough*,<sup>2</sup> that the defendant had a right to have her confidential communications with her solicitor protected by the injunction sought. On the other hand, the case of *Parratt v. Parratt*<sup>3</sup> was referred to; but the *Vice-Chancellor* held, that the principle laid down in *Cholmondeley v. Clinton*<sup>4</sup> did not apply to this case. There was no ground upon which the Court ought to interfere to prevent the solicitor from communicating to the next of kin what took place between him and the administratrix in the course of the administration of the estate.

The motion was refused, but without costs.

<sup>1</sup> 8 Sim. 262.

<sup>2</sup> 2 De G. & S. 259.

<sup>3</sup> 19 Ves. 261.

<sup>4</sup> *Ex parte Newton*, 3 De G. & S. 584. And see *Fraser v. Palmer*, 4 Y. & C. 515; *Re Wyche*, 11 Beav. 209.

## REMUNERATION OF ATTORNEYS AND SOLICITORS.

It has again and again been said by reformers of all kinds,—whether seated on the Judicial Bench, or exercising the office of Royal Commissioners, or acting as Committees of the Law Amendment Society,—that in carrying out the changes in the Law and the Practice of the Courts, the great working branch of the Profession should be liberally remunerated. They have all admitted, and indeed many have urged, that for the good of the public, a well-educated and honourable body of men should be encouraged to enter and continue in practice as attorneys and solicitors.

Yet, notwithstanding these often-repeated professions, the alterations of the last and previous Sessions of Parliament, which were carried by the active zeal of statesmen on both sides of the House, the rights of the practitioners and the interests of the suitors have been woefully neglected. The time has fully arrived when the Profession should exert itself to obtain, at least, common justice in the performance of their arduous duties, and in some return for the large capital they invest, and the enormous responsibility and risk which they incur.

We have heretofore noticed several modes by which a more just estimate than now prevails might be formed for remunerating the skill, learning, and diligence bestowed by the attorneys and solicitors in behalf of their clients. In our Number for the 27th September, 1851, we entered somewhat fully into the details of this subject, and now invite our readers to re-consider the suggestions there made,—to communicate their opinions thereon,—and state the result of the experience they have since derived from the operation of the changes in practice, both in the Courts of Law and Equity, since the commencement of last Michaelmas Term.

We understand that the Incorporated Law Society is actively engaged in the consideration of this subject, and, no doubt, they will be glad to receive the suggestions of practitioners in all the departments of the Law. No time should be lost in making their communications. We shall gladly lend our aid in this essential work.

## NEW ORDER IN CHANCERY.

### REFERENCES BY MASTERS TO CONVEY- ANCING COUNSEL.

24th December, 1852.

THE Right Honourable Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, Order and Direct in manner following, that is to say :

1. When any of the Masters in Ordinary shall request the opinion of any of the Conveyancing Counsel, nominated by the Lord Chancellor under the 15 & 16 Vict. c. 81, s. 41, to be taken upon any matter depending before such Master, such business is to be laid before the Conveyancing Counsel in rotation, to be ascertained in the manner prescribed by the General Orders of the 16th day of December, 1852 ; and a memorandum or minute of every such request is to be prepared by the Master's Chief Clerk, and signed by him, and such memorandum or minute, when marked with the name of the Conveyancing Counsel in rotation, shall be a sufficient authority for such counsel to proceed with such business ; and if the Conveyancing Counsel in rotation shall be unable or decline to proceed therewith, the same shall be offered to the other Conveyancing Counsel, nominated as aforesaid, successively, according to their seniority at the Bar, until some one of them shall accept the same.

2. Where, under a Decree or Order of the Court, whether already made or hereafter to be made, any estate or interest shall be put up for sale with the approbation of one of the Masters in Ordinary, an abstract of the title of such estate or interest is, upon the request of the Master, to be laid before the Conveyancing Council in rotation, for the opinion of such counsel thereon, to the intent that the said Master may be the better enabled to give such directions as may be necessary respecting the conditions of sale of such estate or interest.

3. Notwithstanding the preceding Orders, the Master is to be at liberty to request the opinion of any one in particular of the said Conveyancing Counsel to be taken upon any matter before such Master, where the circumstances of the case may render it expedient to do so.

(Signed) ST. LEONARDS, C.

## ORDER OF THE MASTER OF THE ROLLS.

### APPOINTING EXAMINERS.

7th January, 1853.

WHEREAS, by an Order made by the Right Honourable the Master of the Rolls, on the 13th day of January, 1844, it was, amongst other things, ordered, that every person who has not previously been admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them, should, before he be admitted to take the oath required by the Statute 6 & 7 Vict. c. 73, to be taken by persons applying to act as solicitors of the High Court of Chancery, undergo an examination touching the fitness and capacity to act as a solicitor of the said Court of Chancery, and that twelve solicitors of the said Court, to be appointed by the Master of the Rolls in each year, be Examiners for the purpose of examining and inquiring touching the fitness and capacity of any such applicant for admission as a solicitor; and that any five of the said Examiners shall be competent to conduct the examination of such applicant.

Now, in furtherance of the said Order, the Right Honourable the Master of the Rolls is hereby pleased to order and appoint that Benjamin Austen, Keith Barnes, Edward Savage Bailey, William Loxham Farrer, John Swarbreck Gregory, William Henry Palmer, Edward Rowland Pickering, William Sharpe, John James Joseph Sudlow, Augustus Warren, William Williams, and John Young, solicitors, be Examiners until the 31st December, 1853, to examine every person (not having been previously admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them), who shall apply to be admitted a solicitor of the said Court of Chancery, touching his fitness and capacity to act as a solicitor of the said Court. And the Master of the Rolls doth direct, that the said Examiners shall conduct the examination of every such applicant, as aforesaid, in the manner and to the extent pointed out by the said Order of the 13th day of January, 1844, and the regulations approved by his Lordship in reference thereto, and in no other manner and to no further extent.

(Signed) JOHN ROMILLY, M. R.

## HILARY TERM EXAMINATION.

### QUESTIONS ON THE NEW STATUTES, RULES AND ORDERS.

WE intimated last Term, from information we had then collected, that it was not probable the Examiners of that Term would propound Questions on the alterations of the Law and Practice which came into effect only at the commencement of Michaelmas Term. Our conjectures on that occasion were fully verified.

Now, however, the New Statutes, and the Rules and Orders made for carrying them into effect, having been in operation for two months and a half, and we may reasonably expect that several of the Questions for the Examination in the present Hilary Term, will be founded on the new Acts and Orders, particularly on the Process and Procedure Acts and the Trustees' Act.

At all events,—equally for the sake of the Examination and the importance to every young Practitioner to be well acquainted with the effect of the recent changes,—we recommend that the Candidates should diligently “read up” the New Statutes, Rules and Orders. No doubt they have for the most part had the precaution to do so, but there yet remain ten days within which the memory may be usefully refreshed.

## LAW REFORM.

### NOTICES OF MOTIONS FOR THE ADJOURNED SESSION OF PARLIAMENT.

Mr. *Isaac Butt*.—Bill to make provision for the granting of New Trials in Criminal Cases. For Tuesday, 15th February.

For the following subjects, no specific days have been fixed :—

Mr. *Collier*.—Ecclesiastical Courts.

Mr. *Henry Drummond*.—Bill to facilitate the Transfer of Land.

Mr. *Ewart*.—Total Abolition of the punishment of Death.

Lord *Robert Grosvenor*.—Bill to repeal the Attorneys' and Solicitors' Annual Certificate Duty.

Mr. *Headlam*.—To ask whether it is the intention of her Majesty's Government to introduce any measure for the alteration of the Laws of Mortmain.

Lord *Hotham*.—Bill to preclude the Judges of the Superior Courts of Law and Equity and the Judges of the Ecclesiastical Courts from sitting and voting in the House of Commons.

Mr. *Locke King*.—Bill to make the Franchise in Counties in England and Wales the same as that in Boroughs, by giving the right

of voting to all occupiers of tenements of the annual value of 10*l*.

Mr. *Locke King*.—Bill to amend the Law of Succession to Real Estate in cases of intestacy.

Mr. *Phillimore*.—Address that her Majesty will be pleased to appoint Commissioners to digest the Law of England into a Code.

Mr. *Rice*.—Select Committee to consider the expediency of adopting an uniformity of system of Police in England and Wales.

Lord *Dudley Stuart*.—Bill to repeal the Septennial Act and shorten the duration of Parliaments.

Mr. *Wise*.—To call the attention of the House to the present Law of Settlement, with a view to its total repeal, and to a more equitable mode of assessing the Rates for the relief of the Poor.

\*.\* For the Bills pending before the two Houses, see p. 153, *ante*.

## LEGAL ANTIQUITIES.

### DEED OF CONVEYANCE, A. D. 1301.

THE following is a copy of an ancient deed, at least 550 years old, with the inspection of which we have been favoured. It purports to be a grant of two pieces of copyhold land, of which 36 acres are at Hornden-on-the-Hill, the title to which the deed recites was "gained by single combat," the other piece being at Stanford le Hope, both in the county of Essex. The consideration is stated to be 12*l*., subject to 6*s*. a year to the lord of one manor and 10*d*. a year to the lady of the other manor, with a quit rent to the grantor of 1*d*. There is also a charge for a police rate of 2*d*. The deed is sealed and delivered in the presence of the homage, several of whose names are given, together with "Walter de Hornden, clerk," who no doubt was the monkish writer who prepared the conveyance. It is in an excellent state of preservation both as to the writing and the seal.<sup>1</sup>

It will be observed that the deed bears no date. "The date of a deed many times antiquity omitted; and the reason thereof was, for that the limitation of prescription, or time of memory, did often in process of time change; and the law was then holden, that a deed bearing date before the limited time of prescription, was not pleadable; and therefore they made their deedes without date, to the ende they might alledge them within the time of prescription. And the date of the deedes was commonly added in the raigne of Edw. 2 and Edw. 3, and so ever since," Co. Litt. c. 1, sect. 1, fo. 6, a. The date is therefore probably older than the time of Edw. 2, who began his reign on July 7, 1307.

"SCIENT presentes et futuri, quod ego Thomas Charles de Hornden, dedi concessi et hac presente carta mea confirmavi Radulpho Harel, civi Londoniensi

"Quadraginta acras terræ cum pertinentibus suis cum domibus et edificiis super dictam terram situatis, quantum triginta sex acræ sunt in parochia de Hornden de feodo domini Radulfi de Arden, quas ego lucratus fui per duellam, et quatuor acræ cum pertinentibus suis sunt in parochia de Stanford apud Hallinbroo, de feodo William Richer et Mauldis uxoris ejus.

"Habendum et tenendum de me et de heredibus meis dicto Radulfo et heredibus suis vel cuicunque dictas terras cum pertinentibus suis dare vendere vel assignare voluerunt et hereditas eorum bene et in pace, libere, et quiete, hereditarie, et in perpetuum

"Faciendum inde debitum servitium domini feodi, videlicet, Radulfo de Arden et heredibus suis sex solidos per annum ad quatuor anni terminos, videlicet, ad pascham decem et octo denarios et ad Festum Sancti Johannis Baptisti decem et octo denarios, et ad Festum Sancti Michaelis decem et octo denarios, et ad Festum Sancti Andree Apostoli decem et octo denarios, et domino Regi annuatim duos denarios ad wardam et ad dictam wardam faciendam duos homines per unam noctem et hoc

"LET those present and future know, That I Thomas Charles of Hornden have given, granted, and by this my present deed have confirmed to Ralph Harel, citizen of London

"Forty acres of land with their appurtenances, with the houses and buildings being on the said land, of which 36 acres are in the parish of Hornden, of the fee of the Lord Ralph of Arden, which I gained by single combat, and four acres with their appurtenances are in the parish of Stanford at Hallinbro of the fee of William Richer and Maude his wife

"To have and to hold of me and my heirs to the said Ralph and his heirs, or to whomsoever they shall choose to give, sell, or assign the said lands with their appurtenances, and their heirs well and in peace, freely, quietly, hereditarily, and for ever

"Performing therefore the service due to the Lords of the fee, viz., to Ralph of Arden and his heirs 6*s*. per annum, at the four terms in the year, viz., at Easter 1*s*. 6*d*., and at the Feast of St. John the Baptist 1*s*. 6*d*., and at the Feast of St. Michael 1*s*. 6*d*., and at the Feast of St. Andrew the Apostle 1*s*. 6*d*., and to our Lord the King annually 2*d*. for ward and for two men to keep the said ward for one night in the proper and accustomed place,—and to Maude, the widow of William

<sup>1</sup> The original abounds in contractions of words but which we have rendered in full. It also runs on without a break, but for the sake of showing the several parts of the deed we have broken it into distinct paragraphs.



in loco debito et usueto, et Mauldi relictæ William Richer et heredibus suis per annum decem denarios ad duos anni terminos, medietatem ad Pascham et medietatem ad Festum Sancti Michaelis. Et mihi Thomæ et heredibus meis unum denarium ad Pascham pro omnibus serviitiis redditionibus et secularibus demandis mei vel heredibus meis pertinentibus

"Et ego predictus Thomas Charles et heredes mei warantorabimus, defendemus, et acquietabimus totas predictas terras cum pertinentibus suis predicto Radulfo Hardel et heredibus suis vel eis assignatis contra omnes gentes tam Christianos quam Judeos per predictum servitium

"Pro hac autem donatione, concessione, warrantizatione, defensione, acquietatione, dedit mihi predictus Radulfo trīginta sex denarios argenti in unam summam

"Hujus testibus Simone de Dunthene, Jacob de Stanford, Thomas de Mucking, Johanne le frere, William de Langedon, Waltero de Warehame, Robert de Fonte, John Malegreffe,\* John de Coningbam, Thomas Bendeville, Waltero de Hornden clerico, et aliis."

Richer, and her heirs, 10d. per annum twice in the year, the half at Easter and the half at the Feast of St. Michael. And to me, Thomas, and my heirs, 1d. at Easter for all services, rents, and secular demands appertaining to me or my heirs

"And I the said Thomas Charles and my heirs will warrant, defend, and acquit all the aforesaid lands with their appartenances to the said Ralph Hardel and his heirs or their assigns, against all people, as well Christians as Jews, for the aforesaid service

"And of this gift, grant, warranty, defence, and acquittal, the said Ralph has given me 36 silver marks in one sum

"Whereof are witnesses, Simon of Dunthene, Jacob of Stanford, Thomas of Mucking, and John his brother, William of Langton, Walter of Wareham, Robert of Spring John Malegreffe, John of Coningbam, Thomas Bendeville, Walter of Hornden clerk, and others.

\* "John Malgreff, in 1320, held 50 acres of arable, in the vill of Langedon, of the Priores of Hegham."—*Morant's Essex*, vol. 1, p. 246. This confirms the probable date of the deed.

## ADMISSION OF ATTORNEYS.

*Hilary Term, 1853.*

ADDED TO THE LIST PURSUANT TO JUDGE'S ORDER.

### *Queen's Bench.*

#### *Clerks' Names and Residences.*

Baty, Isaac, Hexham  
Borini, John, 94, Great Russell Street, Bloomsbury; and Flanders  
Lewis, Edward John, 10, Ely Place, Holborn  
Pummer, William, jun., 34, Southampton Street, Russell Square; and Canterbury  
Williams, William Henry, Denbigh; and Carnarvon

#### *To whom Articled, Assigned, &c.*

Charles Head, Hexham.  
Michael Davis, jun., Usk; Flanders.  
James Graham Lewis, Ely Place.  
Stephen Plummer, jun., Canterbury.  
Thomas Hughes, Denbigh; and Price Morris, Denbigh.

## TAKING OUT AND RENEWAL OF ATTORNEYS' CERTIFICATES.

### *Queen's Bench.*

*On 20th January, 1853.*

Parkin, William, Staines Road; Hounslow.

*For 1st February, 1853.*

Barrell, William, 14, Robert Street, Manchester.

Billar, Geo., 1, Onslow Terrace, Walworth.

Bourne, Henry, Wolsingham, Durham.

Carter, Joseph, 9, Hanover St., Walworth.

Clark, Alfred, Moulton; and Kingston-upon-Hull.

Dalby, John Francis, West Bromwich.

Darke, Samuel Wallwyn, Grove Lane, Camberwell; and Great Newport Street.

Farrar, Frederick Augustus, 47, Charlwood Street, Belgrave Road.

\*Gough, Charles, Souldern, Oxon.; and Lantiaillio, near Llangollen.

Gwynne, Sampson, Southampton Street, Camberwell.

Gwyn, William Horatio, of Bungay.

Hall, James Turbutt, 18, Eagle Street, City Road.

Hall, Lawrence Robert, Bramcote Grove, Nottinghamshire.

Hardy, Edward Webb, West Wickham.

Harrington, John Joseph, 8, North Street, Westminster.

Haynes, James Haynes, 11, Grafton Terrace, Kentish Town; and Gower Street.

Jukes, James Augustine, 36, Goswell St.  
King, Charles Stafford, 15, Serjeant's Inn,  
Fleet Street.

Langston, Henry, 16, Northampton Place,  
Canonbury Square.

Law, Robert Dalton, Manchester.

Llewellyn, John, Bristol.

\*Ottaway, Philip Watson, New Sarum.

Poole, David, 27, Albany Street; and Har-  
rington Street.

Phillips, William, 6, Stonefield Terrace, Is-  
lington; and Stoke.

Raper, Robert George, 41, Great Russell  
Street, Bloomsbury; Lansdowne Place; and  
Wakefield Street.

Rattenbury, Charles Thomas, Orange Grove,  
New Cross.

Reynard, Francis, 7, Gordon Place, Ken-  
sington.

Rhodes, Frederick Jackson, Market Rasen.

Richards, James George, 57, Great Portland  
Street.

Sanderson, Charles, 28, Parliament Street;  
Surrey Street; Denbigh; and Wellingboro'.

Shattock, J. 55, Alfred Road, Paddington;  
Tilchester Road; and Alfred Road.

Smallwood, Thomas, Shrewsbury, Salop.

Smart, Samuel, Walton, near Lutterworth;  
and Cape of Good Hope.

Spencer Robert, Gateshead.

Summers, William Henry, 1, Caversham St.,  
Chelsea; Lower Belgrave Place; Warwick

St; Cottage Road; and Upper Eaton St.

Sykes, William, Heckmondwike; and Mill-  
bridge, near Leeds.

Tooth, Robert, 156, Strand.

Wells, Thomas, 18, Saint Alban's St., Lam-  
beth; Mile End Road; Baker's Row; and  
Chapel Street, Pentonville.

Williams, Henry, 11, Dudley Place, Pad-  
dington; North Street, Belgrave Street; and  
Westbourne Park Villas.

#### NEW EXAMINERS IN CHANCERY.

THE Master of the Rolls has appointed  
Kenyon Stevens Parker, Q. C., and Charles  
Otter, Esqrs., to be Examiners in the Court of  
Chancery, upon the death of Thomas Hall  
Plumer, Esq., and the promotion of the Hon.  
Charles Pelham Villiers to be Judge Advocate.  
Mr. Parker was called to the Bar at Gray's  
Inn, Nov. 27, 1819, and made a Queen's  
Counsel in Hilary Term, 1842, and soon after-  
wards a Bencher of Lincoln's Inn. Mr. Otter  
is of the Common Law Bar, having been called  
at Lincoln's Inn, Jan. 30, 1835.

We believe these appointments will be very  
satisfactory to the Profession. The appoint-  
ment of a member of the Common Law Bar  
has been judiciously made, having regard to  
the examinations *vidæ voce* in which that  
branch of the Profession is eminently skilful.

#### LAW APPOINTMENTS.

Charles Cardwell, Esq., of Lincoln's Inn,  
who was called to Bar 6th May, 1846, has  
been appointed Private Secretary to the Presi-  
dent of the Board of Trade.

Arthur Hobhouse, Esq., who was called to  
Bar at Lincoln's Inn, on May 6, 1845, has  
been appointed by Sir Thomas Redington to  
be his official Private Secretary.

#### NEW MEMBERS OF PARLIAMENT.

The Right Honourable *Edward Cardwell*  
for the city of Oxford, in the room of Sir  
William Page Wood, Knight, Vice-Chancellor.

The Right Honourable Sir *George Grey*,  
Bart., for Morpeth, in the room of the Ho-  
nourable Edward George Granville Howard,  
who has accepted the office of Steward of her  
Majesty's manor of Northstead.

#### SPEEDY EXECUTIONS IN ACTIONS ON BILLS OF EXCHANGE.

Mr. Justice *Erle* announced, that in every  
case where a verdict may be found against  
acceptors of bills of exchange, makers of pro-  
missory notes, and drawers of cheques, exe-  
cution would issue, without special applica-  
tion to the Judge, in four days, and in other cases,  
where the parties were only liable in a second  
degree, the execution would not issue until  
fourteen days had elapsed.

#### NOTES OF THE WEEK.

##### COUNTY COURTS.—NEW SCALE OF COSTS.

We are informed, that the new Scale of  
Costs, framed by the Judges of the County  
Courts, has been for some time complete, and  
was laid before the Judges of the Superior  
Courts for their approval, which has not yet  
been obtained. It is whispered that the new  
Table is framed with a more liberal considera-  
tion for professional services than the Scale  
which at present regulates the Masters in  
taxing in the Superior Courts of Common  
Law, and that some of the Judges of the  
Superior Courts have objected to the County  
Court Scale upon this ground.

\* These two applications will be made to the  
Court on the last day of Term.

## ATTORNEYS TO BE ADMITTED.

Easter Term, 1853.

## Queen's Bench.

## Clerks' Names and Residences.

## To whom Articled, Assigned, &amp;c.

Adje, Arthur, 38, Norfolk-street; Great James-st.; Devonshire-st.; and Bradford	Wm. Stone, Bradford, Wilts
Allen, William, 4, Southampton-street; Mornington-crescent; and Derby	W. Williamson, Derby
Appleton, Henry, Stokesley	J. P. Sowerby, Stokesley
Aspinall, Clarke, New Ferry, Cheshire	J. Collinson, Doncaster; R. Radcliffe, Liverpool
Atkinson, Richard Mathew, 38, Grove-place, Brompton; and Northallerton	J. C. Atkinson, Northallerton
Babington, John, 37, Store-st., Bedford-sq.	E. Babington, Horncastle; J. Scott, Lincoln's-inn-fields
Banks, Charles Edmund, 4, Henrietta-street, Cavendish-square; and Louth	H. Pye, Louth
Barber, William, Birmingham	W. P. Allcock, Birmingham
Barker, Horace Isaac, Beeston, Bedfordshire	E. Ayles, Biggleswade
Bartleet, William Smith, Stourbridge; and Blake-down	G. C. Vernon, Broomsgrave; L. Minshall, Brooms-grove
Baugh, George, 11, Blomfield-ter., Pimlico; and Broseley	G. Potts, Broseley
Bell, Octavius, 31, Frederick-street, St. Pancras; Newcastle; and Much Hadham	C. U. Laws, Newcastle
Bell, John Leonard, 2, Vernon-pl., Bloomsbury; University-street; and Bourn	W. D. Bell, Bourn
Bellas, Thomas, 12, Compton-street, East, Brunswick-square	J. Coverdale, Bedford-row
Bentley, S. Green Beverley, Fitzroy-sq., Kentish Town; Deadmanstone, near Huddersfield	J. Freeman, Huddersfield
Berridge, Robert Bristow, 18, Ampton-st., Gray's-inn-road; and Leicester	S. Berridge, Leicester
Booker, George, jun., 14, Ampton-street, Gray's-inn-road; and Allerton, near Liverpool	S. Booker, Liverpool
Boucher, Benjamin, 52, Frederick-st., Grays-inn-road; and Wiveliscombe	F. N. Bower, Wiveliscombe
Braund, Marwood Kelly, 15, Upper Park-street, Islington; and Exeter	E. H. Roberts, Exeter
Brutton, Charles, jun., 2, Abbey-terrace, St. John's-wood; and Plaistow	C. Brutton, Exeter; T. H. Law, Barnstaple; F. Impey, Bedford-row
Burch, Arthur, 5, Pilgrim-street, Ludgate-hill; and St. Thomas the Apostle	W. Lambert, jun., Exeter; C. H. R. Rhodes, Chancery-lane
Butler, Francis George, Lincoln's-inn-fields; and St. Neot's	O. R. Wilkinson, St. Neot's
Calthorp, Thomas Dounie, 4, Upper-park-place, Blackheath-park	J. S. Rymer, Whitehall
Carr, Edward Slater, 32, Gloucester-place, Hyde-park; and Leamington Priors	J. Newbold, Bedford-row; A. S. Field, Leamington Priors
Carrington, Charles James, 2, Cambridge-terrace, Barnsbury-park; and Manchester	J. Barlow, jun., Manchester
Chisholm, John, 29, Edward-st., Hampstead-road	J. C. Hall, (since dead) Lincoln's-inn-fields
Clark, Frederick, 12, Wilmot-street, Russell-sq.; and Snaith	E. E. Clark, Snaith
Clarke, Edmund J. H. W., 55, Acton-st., Gray's-inn-road; and Lower Calthorpe-street	T. Rogers, Helston
Coates, John, 8, Everett-street, Russell-square; and Clifton	C. Savery, Bristol
Cobb, William Wise, 1, Soley-terrace, Amwell-st.	C. F. Cobb, Moorgate-street
Cooke, John Thomas, 6, Frederick's-place, Old Jewry; and Tamworth	J. Shaw, Tamworth
Cooper, Thomas, Kidderminster	William Boycott, Kidderminster
Cope, Arthur, 58, Euston-square	N. Bridges, Red-lion-square
Cotterill, William Henry, jun., 32, Throgmorton-street; and Croydon	W. H. Cotterill, Throgmorton-street
Cotton, Stapleton, 82, Judd-street, Brunswick-sq.; and Tavistock-place	W. J. Grane, Bedford-row
Dixon, Albert, Staple-inn; and Fulham	W. Dixon, Staple-inn
Drake, Montague W. T., 47, Baker-street	H. Maltby, Bank-buildings
Earle, Henry Benjamin, 47, Lincoln's-inn-fields	H. Earle, Andover
Edge, James Henry, 7, Denmark-st., Islington; Bedford-row; and Liverpool	J. Atkinson, Liverpool

[The remainder of this List will be given in our next Number.]

## GENERAL RULES OF THE COURTS OF COMMON LAW.

### *Hilary Term, 1853.*

Whereas the practice of the Courts of Queen's Bench, Common Pleas, and Exchequer, in civil actions, in respect of which the said Courts possess a common jurisdiction, has been to a great extent superseded or altered by the Common Law Procedure Act, 1852, and it is expedient that the written rules of practice of the said Courts should be consolidated and rendered uniform: It is ordered, that all existing written rules of practice in any of the said Courts in regard to such civil actions, save and except as regards any step or proceeding heretofore taken, shall be and the same are hereby annulled, and that the practice to be observed in the said Courts with respect to the matters hereafter mentioned shall be as follows; that is to say,

#### WRIT OF SUMMONS.

1. When a writ of summons is indorsed in the special form mentioned in sec. 27 of the Common Law Procedure Act, 1852, the following are the amounts which may be indorsed by the plaintiff's attorney or agent upon the writ for costs; and to include mileage:

##### In Actions above 20*l*.

In town causes.....	£3	8	0
In country or agency cases (including mileage).....	4	0	0

##### In Actions under 20*l*.

In town causes.....	£2	14	0
In country or agency cases (including mileage).....	3	2	0

Where the plaintiff's attorney, at the time of issuing the writ, claims more than the sums fixed as above, the indorsement on the writ of summons in respect of costs shall be as follows: "Such sum as shall be allowed on taxation for costs." And in case the plaintiff shall be found not entitled to more costs than such fixed sums, or if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation. So if the attorney has indorsed on the writ one of the fixed sums for the costs of judgment, and claims more costs on signing judgment, and on taxation shall be found not entitled to more than such sum, or if more than one-sixth be taken off on taxation, the plaintiff's attorney shall in like manner pay the costs of taxation.

#### APPEARANCE.

2. If two or more defendants in the same action shall appear by the same attorney and

at the same time, the names of all the defendants so appearing shall be inserted in one appearance.

#### ATTORNEY AND GUARDIAN.

3. An attorney not entering an appearance in pursuance of his undertaking shall be liable to an attachment.

4. No attorney shall be changed without the order of a Judge.

5. A special admission of prochein amy, or guardian, to prosecute or defend for an infant, shall not be deemed an authority to prosecute or defend in any but the particular action or actions specified.

#### JOINDER OF PARTIES.

6. Whenever a plaintiff shall amend the writ after notice by the defendant, or a plea in abatement of a non-joinder by virtue of the Common Law Procedure Act, 1852, sect. 36, he shall file a consent in writing of the party or parties whose name or names are to be added, together with an affidavit of the handwriting, and give notice thereof to the defendant, unless the filing of such consent be dispensed with by order of the Court or a Judge.

#### PLEADINGS.

7. No side bar rule for time to declare shall be granted.

8. The defendant shall not be at liberty to waive his plea, or enter a relitta verificatione after a demurrer, without leave of the Court or a Judge, unless by consent of the plaintiff or his attorney.

9. In case the time for pleading to any declaration or for answering any pleadings, shall not have expired before the 10th day of August in any year, the party called upon to plead, reply, &c., shall have the same number of days for that purpose after the 24th day of October, as if the declaration or preceding pleading had been delivered or filed on the 24th of October.

10. Where a defendant shall plead a plea of judgment recovered, he shall in the margin of such plea state the date of such judgment, and if such judgment shall be in a Court of record, the number of the roll on which such proceedings are entered, if any; and, in default of his so doing, the plaintiff shall be at liberty to sign judgment as for want of a plea; and in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer or person having the custody of the records or proceedings of the Court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea.

## PAYMENT OF MONEY INTO COURT.

11. No affidavit shall be necessary to verify the plaintiff's signature to the written authority to his attorney to take money out of Court, unless specially required by the Master.

12. When money is paid into Court in respect of any particular sum or cause of action in the declaration, and the plaintiff accepts the same in satisfaction, the plaintiff, when the costs of the cause are taxed, shall be entitled to the costs of the cause in respect of that part of his claim so satisfied, up to the time the money is so paid in and taken out, whatever may be the result of any issue or issues in respect of other causes of action, and if the defendant succeeds in defeating the residue of the claim, he will be entitled to the costs of the cause in respect of such defence, commencing at "Instructions for Plea," but not before.

13. Where money is paid into Court in several actions which are consolidated, and the plaintiff, without taxing costs, proceeds to trial on one and fails, he shall be entitled to costs on the others up to the time of paying money into Court.

## DEMURRER.

14. The party demurring may give a notice to the opposite party to join in demurrer in four days, which notice may be delivered separately or indorsed on the demurrer, otherwise judgment.

15. No motion or rule for a concilium shall be required; but demurrers as well as all special cases, special verdicts, and appeals from county courts, shall be set down for argument in the special paper at the request of either party, four clear days before the day on which the same are to be argued, and notice thereof shall be given forthwith by such party to the opposite party.

16. Four clear days before the day appointed for argument the plaintiff shall deliver copies of the demurrer book, special case, special verdict, or appeal cases, with the points intended to be insisted on, to the Lord Chief Justice of the Queen's Bench or Common Pleas, or Lord Chief Baron, as the case may be, and the senior Puisne Judge of the Court in which the action is brought; and the defendant shall deliver copies to the other two Judges of the Court next in seniority; and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default; and the party making default shall not be heard until he shall have paid for such copies, or deposited with the Master a sufficient sum to pay for such copies. If the statement of the points have not been exchanged between the parties, each party shall, in addition to the two copies left by him, deliver also his statement of the points to the other two Judges, either by marking the same

in the margin of the books delivered, or on separate papers.

17. When there shall be a demurrer to part only of the declaration or other subsequent pleadings, those parts only of the declarations and pleadings to which such demurrer relates shall be copied into the demurrer books; and if any other parts shall be copied, the Master shall not allow the costs thereof on taxation, either as between party and party, or as between attorney and client.

## VENUE, CHANGE OF.

18. No venue shall be changed without a special order of the Court or a Judge, unless by consent of the parties.

## PARTICULARS OF DEMAND OR SET OFF.

19. With every declaration (unless the writ has been specially indorsed under the provisions contained in the 25th section of the Common Law Procedure Act, 1852,) delivered or filed, containing causes of action such as those set forth in schedule B. of that Act, and numbered from 1 to 14, inclusive, or of a like nature, the plaintiff shall deliver or file full particulars of his demand under such claim, where such particulars can be comprised within three folios; and where the same cannot be comprised within three folios, he shall deliver or file such a statement of the nature of his claim, and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios; and with every plea of set-off containing claims of a similar nature as those in respect of which a plaintiff is required to deliver or file particulars, the defendant shall in like manner deliver particulars of his set-off. And to secure the delivery or filing of particulars in all such cases, it is ordered, that if any such declaration shall be delivered or filed, or any plea of set-off delivered, without such particulars or such statement as aforesaid, and a Judge shall afterwards order a delivery of particulars, the plaintiff or defendant, as the case may be, shall not be allowed any costs in respect of any summons for the purpose of obtaining such order, or of the particulars he may afterwards deliver; and a copy of the particulars of the demand, and set-off, shall be annexed by the plaintiff's attorney to every record at the time it is entered with the proper officer.

20. A summons for particulars, and order thereon, may be obtained by a defendant before appearance, and may be made, if the Judge think fit, without the production of any affidavit.

21. A defendant shall be allowed the same time for pleading after the delivery of particulars under a Judge's order which he had at the return of the summons, unless otherwise provided for in such order.

SECURITY FOR COSTS.

22. An application to compel the plaintiff to give security for costs must, in ordinary cases, be made before issue joined.

DISCONTINUANCE.

23. To entitle a plaintiff to discontinue after plea pleaded, it shall not be necessary to obtain the defendant's consent, but the rule shall contain an undertaking on the part of the plaintiff to pay the costs, and a consent that if they are not paid within four days after taxation defendant shall be at liberty to sign judgment of non pros.

STAYING PROCEEDINGS.

24. In any action against an acceptor of a bill of exchange, or the maker of a promissory note, the defendant shall be at liberty to stay proceedings on payment of the debt and costs in that action only.

COGNOVIT; WARRANT OF ATTORNEY; JUDGE'S ORDER FOR JUDGMENT.

25. No judgment shall be signed upon any cognovit or any warrant of attorney, without such cognovit or warrant being delivered to and filed by the Master, who is hereby ordered to file the same in the order in which it is received.

26. Leave to enter up judgment on a warrant of attorney above one and under ten years old, is to be obtained by order of a Judge made *ex parte*, and if ten years old or more, upon a summons to show cause.

27. Every attorney or other person who shall prepare any warrant of attorney to confess judgment, which is to be subject to any defeasance, shall cause such defeasance to be written on the same paper or parchment on which the warrant is written, or cause a memo-

randum in writing to be made on such warrant, containing the substance and effect of such defeasance.

28. The costs of filing a Judge's order for judgment against a trader defendant under the Bankrupt Act, shall not be allowed unless specially ordered by the Judge.

EVIDENCE; ADMISSION AND INSPECTION OF DOCUMENTS; SUBPENA TO PRODUCE RECORDS; DEPOSITIONS ON INTERROGATORIES.

29. The form of notice to admit documents referred to in the Common Law Procedure Act, 1852, section 117, may be as follows:—

In the Q. B. }  
C. P. } A. B. v. C. D.  
or Exchequer. }

Take notice, that the { Plaintiff } in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the { Defendant, } his attorney or agent, at { Plaintiff, } on , between the hours of , and the { Defendant } is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause. Dated, &c.

To E. F., Attorney, o: G. H., Attorney  
[ " Agent " ] for { Defendant }  
[ " Agent " ] for { Plaintiff }  
or [ " Agent " ] for { Plaintiff }  
[ " Agent " ] for { Defendant }.

[Here describe the documents, the manner of doing which may be as follows:]

ORIGINALS.

Description of Documents.	Date.
Deed of Covenant between A. B. and C. D. 1st part; and E. F. 2d part	1st January, 1848.
Indenture of Lease from A. B. to C. D.	1st February, 1848.
Indenture of Release between A. B., C. D., 1st part, &c.	2d February, 1848.
Letter, Defendant to Plaintiff	1st March, 1848.
Policy of Insurance on Goods by ship <i>Isabella</i> on voyage from <i>Oporto</i> to London	3d December, 1847.
Memorandum of Agreement between C. D., Captain of said Ship, and E. F.	1st January, 1848.
Bill of Exchange for 100 <i>l.</i> at Three Months, drawn by A. B. on and accepted by C. D., endorsed by E. F. and G. H.	1st May, 1849.

## COPIES.

Description of Documents.	Dates.	Original or Duplicate, served, sent, or delivered, when, how, and by whom.
Register of baptism of A.B. in the pariah } of X. - - - - - }	1st January, 1808.	{ Sent by General Post, 2d Feb., 1848. Served 2d March, 1848, on defend- ant's attorney, by E. F. of —.
Letter—plaintiff to defendant - - -	1st February, 1848 -	
Notice to produce papers - - -	1st March, 1848 -	
Record of a judgment of the Court of } Queen's Bench in an action, J. S. v. J. N. }	Trinity Term, 10th Vict.	
Letters patent of King Charles II. in the } Rolls Chapel - - - - - }	1st January, 1680.	

30. In all cases of trials, writs of inquiry, or inquisitions of any kind, either party may call on the other party, by notice, to admit documents in the manner provided by and subject to the provisions of the Common Law Procedure Act, 1852; and in case of the refusal or neglect to admit after such notice given, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or inquisition the Judge or presiding officer shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the Master a saving of expense.

31. An order upon the lord of a manor, to allow the usual limited inspection of the Court rolls, on the application of a copyhold tenant, may be absolute in the first instance, upon an affidavit that the copyhold tenant has applied for and been refused inspection.

32. No subpoena for the production of an original record shall be issued unless a rule of Court or the order of a Judge shall be produced to the officer issuing the same, and filed with him, and unless the writ shall be made conformable to the description of the document mentioned in such rule or order.

33. All depositions of witnesses taken under the order of a Judge, rule of Court, or writ of commission, shall be returned to and filed in the office of the Masters of the Court in which the action or proceeding is pending.

## TRIAL, NOTICE OF TRIAL, AND INQUIRY.

34. Notice of trial or inquiry, and of continuance of trial or inquiry, shall be given in town; but countermand of notice of trial or inquiry may be given either in town or country,

unless otherwise ordered by the Court or a Judge.

35. The expression "Short notice of trial," or "Short notice of inquiry," shall in all cases be taken to mean four days.

36. Notice of trial or inquiry may be continued to any sitting in or after term, on giving a notice of continuance four days before the time mentioned in the notice of trial or inquiry, unless short notice of trial or inquiry has been given, in which cases two days' previous notice shall be sufficient, unless otherwise ordered by the Court, or a Judge, or by consent.

37. Countermand of notice of inquiry shall be given four days before the day of inquiry mentioned in the notice, unless short notice of inquiry has been given, and then two days before such day, unless otherwise ordered by the Court, or a Judge, or by consent.

38. On a replication or other pleading denying the existence of a record pleaded by the defendant, a rule for the defendant to produce the record shall not be necessary or used, and instead thereof a four days' notice shall be substituted, requiring the defendant to produce the record, otherwise judgment.

39. The costs of the day for not proceeding to trial or to execute a writ of inquiry may be obtained by a side bar rule, on the usual affidavit.

40. In all cases where the plaintiff's pleading is in denial of the pleading of the defendant, without joining issue, the plaintiff's attorney may give notice of trial at the time of delivering his replication or other subsequent pleading; and in case issue shall afterwards be joined, such notice shall be available; but if issue be not joined on such replication, or other subsequent pleading, and the plaintiff shall sign judgment for want thereof, and forthwith give notice of executing a writ of inquiry, such notice shall operate from the time that notice

of trial was given as aforesaid; and in all cases where the defendant demurs to the plaintiff's declaration, replication, or other subsequent pleading, the defendant's attorney, or the defendant, if he plead in person, shall be obliged to accept notice of executing a writ of inquiry on the back of the joinder in demurrer; and in case the defendant pleads a plea in bar or rejoinder, &c., to which the plaintiff demurs, the defendant's attorney, or the defendant, if he plead in person, shall be obliged to accept notice of executing a writ of inquiry on the back of such demurrer.

41. Notice of a trial at bar shall be given to the Masters of the Court before giving notice of trial to the party.

42. No trial by proviso shall be allowed in the same Term in which the default of the plaintiff has been made, and no rule for a trial by proviso shall be necessary.

43. All causes to be entered for trial in London and Middlesex shall be entered as follows; that is to say, if notice of trial shall be given for any sitting within Term, two days before the day of sitting; and if for a sitting after Term, before eight o'clock, P.M., of the day before the first day of such sitting, and if the same shall not be so entered for such sittings respectively, a *ne recipiatur* may be entered.

#### JURY AND VIEW.

44. No rule for a special jury shall be granted on behalf of any defendant (or plaintiff in replevin), except on an affidavit, either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given; and in the latter case, no such rule is to be granted unless such application is made for it more than six days before that day; provided that a Judge may, on summons, order a rule for a special jury to be drawn up at any time.

45. No cause shall be tried by a special jury in Middlesex or London, unless the rule for such special jury be served, and the cause marked in the Associate's book as a special jury cause, on or before the day preceding the day appointed in Middlesex and London respectively for the trial of special juries.

46. There shall be no rule for the sheriff to return a good jury upon a writ of inquiry, but an order shall be made by a Judge upon summons for that purpose.

47. Sheriffs, other than the sheriffs of London and Middlesex, shall, seven days before the commission day, make and keep at their offices, for inspection, a printed copy of the panel of the special jurymen to try the special jury causes at the assizes, as directed by the Common Law Procedure Act, 1852; but such special jury need not be summoned, except notice be given as provided for by the 112th section of the said Act.

48. The rule for a view may in all cases be drawn up by the officer of the Court, on the

application of the party, without a motion for that purpose.

49. Upon any application for a view, there shall be an affidavit, stating the place at which the view is to be made, and the distance thereof from the office of the under-sheriff, and the sum to be deposited in the hand of the under-sheriff shall be 10*l.* in case of a common jury, and 16*l.* in case of a special jury, if such distance do not exceed five miles, and 15*l.* in case of a common jury, and 21*l.* in case of a special jury, if it be above five miles. And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses, the deficiency shall forthwith be paid by such attorney to the under-sheriff. And the under-sheriff shall pay and account for the money so deposited according to the scale following; (that is to say,)

	£	s.	d.
For travelling expenses to the under-sheriff, showmen and jurymen, expenses actually paid, if reasonable.			
Fee to the under-sheriff, when the distance does not exceed five miles from his office	1	1	0
Where such distance exceeds five miles	2	2	0
And in case he shall be necessarily absent more than one day, then for each day after the first a further fee of	1	1	0
Fee to each of the showmen the same as the under-sheriff, calculating the distance from their respective places of abode.			
Fee to each common jurymen, per diem	0	5	0
For each special jurymen, per diem	1	1	0
Allowance for refreshment to the under-sheriff, showmen, and jurymen, whether common or special, each, per diem	0	5	0
To the bailiff for summoning each jurymen whose residence is not more than five miles distant from the office of the under-sheriff	0	2	6
And to each whose residence does exceed five miles of such distance	0	5	0

#### NEW TRIALS, MOTIONS IN ARREST OF JUDGMENT, AND JUDGMENT NON OBSTANTE VEREDICTO.

50. No motion for a new trial, or to enter verdict or nonsuit, motion in arrest of judgment, or for judgment non obstante veredicto, shall be allowed after the expiration of four days from the day of trial, nor in any case after the expiration of the Term, if the cause be tried in Term, or after the expiration of the first four days of the ensuing term when the cause is tried out of Term, unless entered in a list of postponed motions by leave of the Court.



51. No suitor who appears in person shall be at liberty to set down any motion in such list of postponed motions, without the express leave of the Court.

52. No affidavit shall be used in support of a motion for a new trial in any case, unless such affidavit shall have been made within the time limited for the making such motion, without the special permission of the Court for that purpose.

53. If such motion as above mentioned be entered in such list of postponed motions, or if such motion be postponed by leave of the Court in the case of a cause tried in Term, the attorney who has instructed counsel to make the motion shall give notice of it to the attorney of the opposite party, otherwise judgment signed on behalf of the opposite party shall be deemed regular, and every suitor who appears in person shall give a similar notice.

54. If a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he succeed on the second.

#### JUDGMENT.

55. No rule for judgment shall be necessary; and after the return of a writ of inquiry judgment may be signed at the expiration of four days from such return.

56. All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day; but it shall be competent for the Court or a Judge to order a judgment to be entered *nunc pro tunc*.

57. When a plaintiff or defendant has obtained a verdict in Term, or in case a plaintiff has been nonsuited at the trial in or out of Term, judgment may be signed and execution issued thereon in fourteen days, unless the Judge who tries the cause, or some other Judge, or the Court, shall order execution to issue at an earlier or later period, with or without terms.

58. Where issue shall be joined in any cause which is ordered to be tried before the Sheriff or a Judge of an Inferior Court of Record, the defendant may at the time when, according to the 101st section of the Common Law Procedure Act, 1852, a defendant might give notice to the plaintiff to bring on an issue to be tried, give twenty days' notice to the plaintiff to bring on the issue to be tried before such Sheriff or Judge at the Court to be holden next after the expiration of such twenty days; and if the plaintiff neglects to give notice of trial before such Sheriff or Judge, or to proceed to trial in pursuance thereof, the defendant may proceed as provided for by the said 101st section.

#### COSTS; SETTING OFF DAMAGES OR COSTS.

59. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the attorney of the party whose costs are to be taxed to the other party, or his attorney, in all cases where a notice to tax is necessary.

60. One appointment only shall be deemed necessary for proceeding in the taxation of costs or of an attorney's bill.

61. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his attorney or guardian.

62. When issues in law and fact are raised, the costs of the several issues both in law and fact will follow the finding or judgment, and if the party entitled to the general costs of the cause obtained a verdict on any material issue, he will also be entitled to the general costs of the trial; but if no material issue in fact be found for the party otherwise entitled to the general costs of the cause, the costs of the trial shall be allowed to the opposite party.

63. No set-off of damages or costs between parties shall be allowed to the prejudice of the attorney's lien for costs in the particular suit against which the set-off is sought; provided, nevertheless, that interlocutory costs in the same suit, awarded to the adverse party, may be deducted.

#### ERROR.

64. Within eight days after the filing with the Master of the memorandum of error in fact, required by the Common Law Procedure Act, 1852, the plaintiff in error shall assign error; and in default, the defendant in error, his executors or administrators, shall be entitled to sign judgment of non pros.

65. No rule to plead to assignment of error in fact, or any other pleadings in error, shall be necessary, but either party may give to the opposite party a notice to answer such pleading within four days, otherwise judgment; which notice may be delivered separately, or indorsed on the pleading.

66. Notice of trial, and all other proceedings thereon, shall be the same as in issues joined in an ordinary action.

67. After the suggestion of error in law, alleged and denied as prescribed by the Common Law Procedure Act, 1852, is entered, either party may set down the case for argument, and forthwith give notice in writing to the opposite party, and proceed to the argument thereof as on a demurrer, without any rule or motion for a *concilium*.

68. Four clear days before the day appointed for argument, the plaintiff in error shall deliver copies of the judgment roll of the Court below to the Judges of the Queen's Bench on error from the Common Pleas or Exchequer, and to

the Judges of the Common Pleas on error from the Queen's Bench; and the defendant in error shall deliver copies thereof to the other Judges of the Court of Exchequer Chamber before whom the case is to be heard, and in default by either party, the other party may on the following day deliver such books as ought to have been delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with the Master a sufficient sum to pay for such copies.

69. The costs of proceedings in error shall be taxed and allowed as costs in the cause.

#### EXECUTION.

70. It shall not be necessary, before issuing execution upon any judgment whatever, to enter the proceedings upon any roll.

71. No writ of execution shall be issued till the judgment paper, postea, or inquisition, as the case may be, has been seen by the proper officer, nor shall any writ of execution be issued without a præcipe being filed with the proper officer.

72. Every writ of execution shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chief Justice or of the Lord Chief Baron of the Court from which the same shall issue, or in case of a vacancy of such office then in the name of the senior Puisne Judge of the said Court, and may be made returnable on a day certain in term.

73. Every writ of execution shall be endorsed with the name and place of abode or office of business of the attorney actually suing out the same, and in case such attorney shall not be an attorney of the Court in which the same is sued out, then also with the name and place of abode or office of business of the attorney of such Court in whose name such writ shall be taken out; and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be endorsed upon the said writ; and in case no attorney shall be employed to issue the writ, then it shall be endorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

74. Writs of *capias ad satisfaciendum* for the purposes of outlawry on final process, or to fix bail, must be made returnable on a day certain in term, and may be so returnable on any day in term, and it shall be sufficient for either purpose that there be eight days between the teste and return.

75. A writ of *capias ad satisfaciendum* to fix bail shall have eight days between the teste

and return, and must, in London and Middlesex, be entered four clear days in the public book at the Sheriff's office.

76. Every writ of execution shall be endorsed with a direction to the Sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered, under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of four pounds per centum per annum from the time when the judgment was entered up, or if it was entered up before the 1st of October, 1838, then from that day; provided that in cases where there is an agreement between the parties that more than four per cent. interest shall be secured by the judgment, then the endorsement may be accordingly to levy the amount of interest so agreed.

77. In cases of an assessment of further damages, pursuant to the Statute of 8 & 9 William III., it shall be stated in the body of the writ of execution that the Sheriff, or other officer or person to whom the writ is directed, is to levy interest on the damages assessed, and costs taxed in that behalf, at the rate of four pounds per centum per annum from the day on which execution was awarded, unless execution was awarded before the 1st of October, 1838, and in that case from that day.

#### REVIVOR AND SCIRE FACIAS.

78. A plaintiff shall not be allowed a rule to quash his own writ of *scire facias* or *revivor*, after a defendant has appeared, except on payment of costs.

#### AUDITA QUERELA.

79. No writ of *audita querela* shall be allowed unless by rule of Court or order of a Judge.

#### ENTRY OF SATISFACTION ON ROLL.

80. In order to acknowledge satisfaction of a judgment it shall be requisite only to produce a satisfaction piece, in form as hereinafter mentioned; and such satisfaction piece shall be signed by the party or parties acknowledging the same, or their personal representatives; and such signature or signatures shall be witnessed by a practising attorney of one of the Courts at Westminster expressly named by him or them, and attending at his or their request, to inform him or them of the nature and effect of such satisfaction piece before the same is signed, and which attorney shall declare himself, in the attestation thereto, to be the attorney for the person or persons so signing the same, and state he is witness as such attorney; [provided that a Judge at chambers may make an order dispensing with such signature under special circumstances, if he thinks fit,] and in cases where the satisfaction piece is signed by

the personal representative of a deceased, his representative character shall be proved in such manner as the Master may direct.

#### FORM OF SATISFACTION PIECE.

In the  
Monday, the                      day of                      A.D. 185 .  
"                      to wit.—Satisfaction is acknow-  
" ledged between                      Plaintiff, and  
"                      Defendant in an action  
" for                      and                      : And                      do  
" hereby expressly nominate and appoint  
"                      , Attorney-at-law, to witness  
" and attest                      execution of this  
" acknowledgment of satisfaction."

" Judgment entered on the  
" day of                      in the year of our  
" Lord, 185                      Roll No.                      ."

Signed by the said  
in the presence of me  
of                      one of the attor-  
neys of the Court of  
at Westminster. And I  
hereby declare myself to be  
attorney for and on behalf  
of the said                      expressly  
named by h                      and attend-  
ing at h                      request to inform  
h                      of the nature and effect  
of this acknowledgment  
of satisfaction (which I ac-  
cordingly did before the same  
was signed by h                      ). And  
I also declare that I sub-  
scribe my name hereto as  
such attorney.

Signature.

the above-named  
plaintiff.

Date.

#### BAILABLE PROCEEDINGS, BAIL, AND BAIL IN ERROR.

81. The Sheriff, or other officer or person to whom any writ of *capias* shall be directed, or who shall have the execution and return thereof, shall, within six days at least after the execution thereof, indorse on such writ the true day of the execution thereof.

82. Where the defendant is described, in the writ of *capias* or affidavit to hold to bail, by initials, or by a wrong name, or without a Christian name, the defendant shall not be discharged out of custody, or the bail-bond delivered up to be cancelled, on motion for that purpose, if it shall appear to the Court that due diligence has been used to obtain knowledge of the proper name.

83. An action may be brought upon a bail-bond by the Sheriff himself in any Court.

84. In all cases where the bail-bond shall be directed to stand as a security, the plaintiff shall be at liberty to sign judgment upon it.

85. Proceedings on the bail-bond may be stayed on payment of costs in one action, unless

sufficient reason be shown for proceeding in more.

86. When bail to the Sheriff become bail to the action, the plaintiff may except to them, though he has taken an assignment of the bail-bond.

87. A plaintiff shall not be at liberty to proceed on the bail-bond pending a rule to bring in the body of the defendant.

88. No rule shall be drawn up for setting aside an attachment, regularly obtained against a Sheriff, for not bringing in the body, or for staying proceedings regularly commenced on the assignment of any bail-bond, unless the application for such rule shall, if made on the part of the original defendant, be grounded on an affidavit of merits, or if made on the part of the Sheriff, or bail, or any officer of the Sheriff, be grounded on an affidavit, showing that such application is really and truly made on the part of the Sheriff, or bail, or officer of the Sheriff, as the case may be, at his or their own expense, and for his or their indemnity only, and without collusion with the original defendant.

89. Whenever a plaintiff shall rule the Sheriff on a return of *cepi corpus* to bring in the body, the defendant shall be at liberty to put in and perfect bail at any time before the expiration of such rule; and, a plaintiff having so ruled the Sheriff, shall not proceed on any assignment of the bail-bond, until the time has expired to bring in the body as aforesaid.

90. In case a rule for returning a writ of *capias* shall expire in vacation, and the Sheriff or other officer having the return of such writ shall return *cepi corpus* thereon, a rule may thereupon issue, requiring the Sheriff or other officer, within the like number of days after the service of such rule as by the practice of the Court is prescribed with respect to rules to bring in the body issued in term, to bring the defendant into Court, by forthwith putting in and perfecting bail above to the action; and if the Sheriff or other officer shall not duly obey such rule an attachment shall issue in the following term for disobedience of such rule, whether the bail shall or shall not have been put in and perfected in the meantime.

91. Notice of more bail than two shall be deemed irregular, unless by order of the Court or a Judge.

92. The bail, of whom notice shall be given, shall not be changed without leave of the Court or a Judge.

93. No person or persons shall be permitted to justify himself or themselves as good and sufficient bail for any defendant or defendants, if such person or persons shall have been indemnified for so doing by the attorney or attorneys concerned for any such defendant or defendants.

94. If any person put in as bail to the action, except for the purpose of rendering only, be a practising attorney, or clerk to a practising attorney, or a sheriff's officer, bailiff or person concerned in the execution of process, the

plaintiff may treat the bail as a nullity, and sue upon the bail-bond as soon as the time for putting in bail has expired, unless good bail be duly put in in the meantime.

95. In the case of country bail, the bail-piece shall be transmitted and filed within eight days.

96. A defendant may justify bail at the same time at which they are put in, upon giving four days' notice for that purpose, before eleven o'clock in the morning, and exclusive of Sunday. If the plaintiff is desirous of time to inquire after the bail, and shall give one day's notice thereof as aforesaid to the defendant, his attorney or agent, as the case may be, before the time appointed for justification, stating therein what further time is required, such time not to exceed three days, then (unless the Court or a Judge shall otherwise order) the time for putting in and justifying bail shall be postponed accordingly, and all proceedings shall be stayed in the meantime.

97. Every notice of bail shall, in addition to the descriptions of the bail, mention the street or place, and number (if any), where each of the bail resides, and all the streets or places, and numbers (if any), in which each of them has been resident at any time within the last six months, and whether he is a housekeeper or freeholder.

98. If the notice of bail shall be accompanied by an affidavit of each of the bail, according to the following form, and if the plaintiff afterwards except to such bail, he shall, if such bail are allowed, pay the costs of justification; and, if such bail are rejected, the defendant shall pay the costs of opposition, unless the Court or a Judge thereof shall otherwise order.

#### FORM OF AFFIDAVIT OF JUSTIFICATION OF BAIL.

In the Queen's Bench [or "Common Pleas," or "Exchequer of Pleas," as the case may be].

Between A. B. plaintiff, and C. D. defendant.

B. B., one of the bail for the above-named defendant, maketh oath, and saith, That he is a housekeeper [or freeholder, as the case may be,] residing at [describing particularly the street or place, and number, if any]; that he is worth property to the amount of £ [the amount required by the practice of the Courts] over and above what will pay all his just debts [if bail in any other action, add "and every other sum for which he is now bail"]; that he is not bail for any defendant except in this action [or, if bail in any other action or actions, add "except for C. D. at the suit of E. F. in the Court of \_\_\_\_\_ in the sum of £ \_\_\_\_\_, for G. H. at the suit of I. K. in the Court of \_\_\_\_\_ in the sum of £ \_\_\_\_\_," specifying the several actions, with the Courts in which they are brought, and the sums in which the deponent is bail]; that the de-

ponent's property, to the amount of the said sum of £ \_\_\_\_\_ [if bail in any other action or actions, here add "and of all other sums for which he is now bail as aforesaid"], consists of [here specify the nature and value of the property in respect of which the bail proposes to justify, as follows: "stock in trade, in his business of \_\_\_\_\_, carried on by him at \_\_\_\_\_ of the value of £ \_\_\_\_\_; of good book debts owing to him to the amount of £ \_\_\_\_\_; of furniture in his house at \_\_\_\_\_, of the value of £ \_\_\_\_\_; of a freehold or leasehold farm of the value of £ \_\_\_\_\_, situate at \_\_\_\_\_, occupied by \_\_\_\_\_, or of a dwelling-house of the value of £ \_\_\_\_\_, situate at \_\_\_\_\_, occupied by \_\_\_\_\_," or of other property, particularizing each description of property, with the value thereof]; and that the deponent hath for the last six months resided at [describing the place or places of such residence].

Sworn [&c., as usual].

99. If the plaintiff shall not give one day's notice of exception to the bail by whom such affidavit shall have been made, the recognizance of such bail may be taken out of Court, without other justification than such affidavit.

100. Where notice of bail shall not be accompanied by such affidavit, and in bail in error, the plaintiff may except thereto within twenty days next after the putting in of such bail and notice thereof given in writing to the plaintiff or his attorney, or where special bail is put in before any Commissioner the plaintiff may except thereto within twenty days next after the bail-piece is transmitted and notice thereof given as aforesaid; and no exception to bail shall be admitted after the time hereinbefore limited.

101. Affidavits of justification shall be deemed insufficient, unless they state that each person justifying is worth double the amount sworn to over and above what will pay his just debts, and over and above every other sum for which he is then bail, except when the sum sworn to exceeds 1,000*l.*, when it shall be sufficient for the bail to justify in 1,000*l.* beyond the sum sworn to.

102. It shall be sufficient, in all cases, if notice of justification of bail be given two days before the time of justification.

103. In all cases bail either to the action or in error shall be justified, when required, within four days after exception, before a Judge at chambers, both in term and vacation.

104. Bail, though rejected, shall be allowed to render the principal without entering into a fresh recognizance.

105. Bail shall be at liberty to render the principal at any time during the last day for rendering, so as they make such render before the prison doors are closed for the night.

106. On application by a defendant or his bail, or either of them, for an order to render a

defendant to a county gaol, it shall be specified on whose behalf such application shall be made, the state of the proceedings in the cause, for what amount the defendant was held to bail, and by the sheriff of what county he was arrested, which facts shall be stated in the order; and that on such order being lodged with the gaoler of the county gaol in which such defendant was so arrested, the defendant may be rendered to his custody in discharge of the bail; and that on such lodgment and render a notice thereof, and of the defendant's being actually in custody thereon, in writing, signed by the defendant or his bail, or either of them, or the attorney or agent of any or either of them, shall be delivered to the plaintiff's attorney or agent, and thereupon the bail for the said defendant shall be wholly exonerated, without entering any exoneretur.

107. If a defendant shall be in custody of the gaoler of any county gaol by virtue of any process issued out of any of the said Courts, he may be rendered in discharge of his bail in any action depending in the said Court in like manner as is last hereinbefore provided, and thereupon the bail shall be wholly exonerated without entering any exoneretur.

108. Where the plaintiff proceeds by action on the recognizance of bail, the bail shall be at liberty to render their principal at any time within the space of eight days next after the service of the process upon them, but not at any later period; and notice thereof given, the proceedings shall be stayed upon payment of the costs of the writ and service thereof only.

109. Bail shall only be liable to the sum sworn to by the affidavit of debt and the costs of suit, not exceeding in the whole the amount of their recognizance.

110. To entitle bail to a stay of proceedings pending a writ of error the application must be made before the time to surrender is out.

111. Whenever two or more notices of justification of bail shall have been given before the notice on which bail shall appear to justify, no bail shall be permitted to justify without first paying (or securing to the satisfaction of the plaintiff, his attorney or agent,) the reasonable costs incurred by such prior notices, although the names of the persons intended to justify, or any of them, may not have been changed, and whether the bail mentioned in any such prior notice shall not have appeared, or shall have been rejected.

#### EJECTMENT.

112. No judgment in ejectment for want of appearance or defence, whether limited or otherwise, shall be signed without first filing an affidavit of the service of the writ, according to the Common Law Procedure Act, 1852, and a copy thereof, or, where personal service has not been effected, without first obtaining a

Judge's Order or a Rule of Court authorizing the signing such judgment; which said Rule or Order, or a duplicate thereof, shall be filed together with a copy of the writ.

113. Where a person not named in the writ in ejectment has obtained leave of the Court or a Judge to appear and defend, he shall enter an appearance according to the Common Law Procedure Act, 1852, entitled in the action against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's attorney, or to the plaintiff, if he sues in person.

114. If the plaintiff in ejectment appears at the trial, and the defendant does not appear, the defendant shall be taken to have admitted the plaintiff's title, and the verdict shall be entered for the plaintiff, without producing any evidence, and the plaintiff shall have judgment for his costs of suit, as in other cases.

#### CAUSES REMOVED FROM INFERIOR COURTS.

115. Rules to appear in causes removed from Inferior Courts shall in all cases be a four-day rule, both in term and vacation.

116. In cases of removal of causes from Inferior Courts by habeas corpus, where bail is required to be put in on behalf of the defendant, the same practice shall be used, as near as may be, as in putting in bail to an ordinary action, and in the event of no bail being put in within eight days after the habeas corpus allowed, a procedendo may issue.

117. If a cause be removed from an Inferior Court having jurisdiction of the cause, the costs in the Court below shall be costs in the cause.

#### PENAL ACTIONS, COMPOUNDING OF.

118. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall have been given to the proper officer; but in other cases it may.

119. The rule for compounding any *qui tam* action shall express therein that the defendant thereby undertakes to pay the sum for which the Court has given him leave to compound such action.

120. When leave is given by the Court of Queen's Bench to compound a penal action, the Queen's half of the composition shall be paid into the hands of the Master of the Crown-office, for the use of Her Majesty.

#### PAUPERS, ACTIONS BY.

121. No person shall be admitted to sue in forma pauperis unless the case laid before

counsel for his opinion, and his opinion thereon, with an affidavit of the party or his attorney that the same case contains a full and true statement of all the material facts, to the best of his knowledge and belief, shall be produced before the Court or Judge to whom application may be made; and no fees shall be payable by a pauper to his counsel and attorney, nor at the offices of the Masters, or Associates, or at the Judge's Chambers, or elsewhere, by reason of a verdict being found for such pauper exceeding five pounds.

122. Where a pauper omits to proceed to trial, pursuant to notice, he may be called upon by a rule to show cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs shall be paid.

#### PRISONERS, AND PROCEEDINGS AGAINST.

123. Every rule or order of a Judge directing the discharge of a defendant out of custody upon special bail being put in and perfected shall also direct a supersedeas to issue forthwith where defendant is in a county gaol.

124. The plaintiff shall proceed to trial, or final judgment, against a prisoner in the term next after issue is joined, or at the sittings or assizes next after such term, unless the Court or a Judge shall otherwise order, and shall cause the defendant to be charged in execution within the term next after such trial or judgment.

125. The keeper of the Queen's Prison shall present to the Judges of the Courts in their respective chambers at Westminster, within the first four days of every term, a list of all such prisoners as are supersedeable, showing as to what actions and on what account they are so, and as to what actions (if any) they still remain not supersedeable.

126. If, by reason of any writ of error, special order of the Court, agreement of parties, or other special matter, any person detained in the actual custody of the keeper of the Queen's Prison be not entitled to a supersedeas or discharge for want of proceeding to trial or judgment, or charging in execution, within the times prescribed, then and in every such case the plaintiff or plaintiffs at whose suit such prisoner shall be so detained in custody shall with all convenient speed give notice in writing of such writ of error, special order, agreement, or other special matter, to the keeper, upon pain of losing the right to detain such prisoner in custody by reason of such special matter; and the keeper shall forthwith after the receipt of such notice cause the matter thereof to be entered in the books of the prison, and shall also present to the Judges of the respective Courts, from time to time, a list of the prisoners to whom such special matter shall relate, show-

ing such special matter, together with the list of the prisoners supersedeable.

127. All prisoners who have been or shall be in the custody of the keeper for the space of one calendar month after they are supersedeable, although not superseded, shall be forthwith discharged out of the Queen's Prison as to all such actions in which they have been or shall be supersedeable.

128. After notice given to any plaintiff by a prisoner of his intention to apply for his discharge under any Act for the Relief of Insolvent Debtors, no such prisoner shall be superseded or discharged out of custody at the suit of such plaintiff, by reason of such plaintiff's forbearing to proceed against him according to the rules and practice of the Courts from the time of such notice given, until some rule or order shall be made in the cause in that behalf.

129. A rule or order for the discharge of a prisoner who has been detained in execution a year for a sum under twenty pounds may be made absolute in the first instance, on an affidavit of notice given ten days before the intended application, which notice may be given before the year expires.

#### SHERIFFS.—RULES TO RETURN WRITS OR BRING IN THE BODY.

130. All rules upon the sheriffs of London and Middlesex to return writs or to bring in the bodies of defendants shall be four-day rules, and upon other sheriffs eight-day rules.

131. When the rule to return a writ expires in vacation, the sheriff shall file the writ at the expiration of the rule, or as soon after as the office shall be open; and the officer with whom it is filed shall indorse the day and hour when it was filed.

132. No Judge's order shall issue for the return of any writ, or to bring in the body of a defendant, but a side bar rule shall issue for that purpose in vacation as in term, which shall be of the same force and effect as side bar rules made for that purpose in term.

133. In case a rule shall issue in vacation for the return of any writ of *capias*, *ca. sa.*, *fi. fa.*, *elegit*, *habere facias possessionem*, *venditioni exponas*, or other writ of execution, and such rule shall have been duly served, but obedience shall not have been paid thereto, an attachment shall issue for disobedience of such rule, whether the thing required by such rule shall or shall not have been done in the meantime.

134. Where any Sheriff, before his going out of office, shall arrest any defendant and take a bail bond and make return of *cepi corpus*, he shall and may within the time allowed by law be called upon to bring in the body by a rule for that purpose, notwithstanding he may be out of office before such rule shall be granted.

**IRREGULARITY.**

135. No application to set aside process or proceedings for irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken a fresh step after knowledge of the irregularity.

136. Where a summons is obtained to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated therein.

137. In all cases where a rule is obtained to show cause why proceedings should not be set aside for irregularity with costs, and such rule is afterwards discharged generally without any special direction upon the matter of costs, it is to be understood as discharged with costs.

**AFFIDAVITS.**

138. The addition and true place of abode of every person making an affidavit shall be insisted therein.

139. In every affidavit made by two or more deponents, the names of the several persons making such affidavit shall be written in the jurat.

140. No affidavit shall be read or made use of in any matter depending in Court in the jurat of which there shall be any interlineation or erasure.

141. Where any affidavit is sworn before any Judge or any Commissioner by any person who from his or her signature appears to be illiterate, the Judge's clerk or Commissioner taking such affidavit shall certify or state in the jurat that the affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand the same, and also that the same party wrote his or her mark or signature in the presence of the Judge's clerk or Commissioner taking the said affidavit.

142. No affidavit of the service of process shall be deemed sufficient if sworn before the plaintiff's own attorney or his clerk.

143. Where an agent in town, or an attorney in the country, is the attorney on the record, an affidavit sworn before the attorney in the country shall not be received; and an affidavit sworn before an attorney's clerk shall not be received in cases where it would not be receivable if sworn before the attorney himself; but this rule shall not extend to affidavits to hold to bail.

144. An affidavit sworn before a Judge of any of the Courts shall be received in the Court to which such Judge belongs though not entitled of that Court, but not in any other Court unless entitled of the Court in which it is to be used.

145. Where a special time is limited for filing affidavits, no affidavit filed after that time

shall be made use of in Court or before the Master, unless by leave of a Court or a Judge.

146. No rule which the Court has granted upon the foundation of any affidavit shall be of any force unless such affidavit shall have been actually made before such rule was moved for, and produced in Court at the time of making the motion.

147. All affidavits used before a Judge out of Court shall be filed with the Masters of the said Courts, and be alphabetically indexed; and such affidavits shall be delivered to the Masters of the respective Courts, in order to be filed, ten days next after that on which the matter is disposed of.

148. No commission for taking affidavits shall be issued to any person practising as a conveyancer, unless such person be also an attorney or solicitor of one of the Courts at Westminster; and no such commission shall issue without an affidavit made by the person intended to be named therein, that he is not and does not intend to become a practising conveyancer, or that he is an attorney or solicitor duly enrolled in one of the said Courts, and hath taken out his certificate for the current year.

**RULES, SUMMONSES, AND ORDERS.**

149. Every rule of Court shall be dated the day of the week, month, and year on which the same is drawn up, without reference to any other time or date.

150. Side bar rules may be obtained on the last as well as on other days in Term.

151. A rule may be enlarged, if the Court think fit, without notice.

152. All enlarged rules shall be drawn up for the first day in the ensuing Term, unless otherwise ordered by the Court.

153. It shall not be necessary to issue more than one summons for attendance before a Judge, upon the same matter, and the party taking out such summons shall be entitled to an order on the return thereof, unless cause is shown to the contrary.

154. An attendance on a summons, or on an appointment before a Master, for half an hour next immediately following the return thereof shall be deemed a sufficient attendance.

155. All written consents upon which orders for signing judgments are obtained shall be preserved in the chambers of the Judges of the respective Courts.

156. In actions where the defendant has appeared by attorney no such order shall be made unless the consent of the defendant be given by his attorney or agent.

157. Where the defendant has not appeared or has appeared in person, no such order shall

be made unless the defendant attends the Judge, and gives his consent in person, or unless his written consent be attested by an attorney acting on his behalf; except in a case where the defendant is a barrister, conveyancer, special pleader, or attorney.

158. Where a Judge's order is made during vacation, it shall not be made a rule of Court before the next Term.

159. When a Judge's order or order of Nisi Prius is made a rule of Court, it shall be a part of the rule that the costs of making the order a rule of Court shall be paid by the party against whom the order is made, provided an affidavit be made and filed that the order has been served on the party, his attorney, or agent, and disobeyed.

160. Rules to show cause shall be no stay of proceedings unless two days' notice of the motion shall have been served on the opposite party, except in the cases of rules for new trials, or to enter verdict or nonsuit, motion in arrest of judgment, or for judgment non obstante verdicto, to set aside award or annuity deed, or to enter a suggestion, or by the special direction of the Court.

#### NOTICES, SERVICE OF, AND OF RULES, PLEADINGS, &C.

161. All notices required by these rules, or by the practice of the Court, shall be in writing.

162. Where the residence of a defendant is unknown, rules, notices, and other proceedings may be stuck up in the office, but not without previous leave of the Court or a Judge.

163. It shall not be necessary to the regular service of a rule or order, that the original rule or order should be shown, unless sight thereof be demanded, except in cases of attachment.

164. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be made before 7 o'clock, P.M. If made after that hour, the service shall be deemed as made on the following day.

165. The Masters of the several Courts shall cause to be kept an alphabetical book at their offices, to be there inspected by any attorney or his clerk, without fee or reward:—and every attorney practising in the said Courts, and residing within ten miles of the General Post-office, shall enter in such book (in alphabetical order) his name and place of business, or some other proper place, within three miles of the said Post-office, where he may be served with pleadings, notices, summonses, orders, rules, and other proceedings; and as often as any such attorney shall change his place of business, or the place where he may be so served as aforesaid, he shall make the like entry thereof in the said book; and all pleadings, notices, summonses, orders, rules, and other proceedings which do not require a personal service shall be

deemed sufficiently served on such attorney if a copy thereof shall be left at the place lastly entered in such book with any person resident at or belonging to such place; and if any such attorney shall neglect to make such entry, the fixing up of any notice, or the copy of any pleadings, notice, summons, order, rule, or other proceeding, for such attorney, in the Masters' offices, shall be deemed a sufficient notice.

166. In all cases where a party sues or defends in person, he shall, upon issuing any writ of summons or other proceeding, or entering an appearance, enter in a book to be kept for that purpose at the Master's office an address within three miles from the General Post-office at which all pleadings, notices, summonses, orders, rules, or other proceedings not requiring personal service shall be left; and if such address shall not be entered in the said book, or if such address shall be more than three miles from the General Post-office, then the opposite party shall be at liberty to proceed by sticking up all pleadings, notices, summonses, orders, rules, or other proceedings in the Master's office without the necessity of any further service.

167. In all cases where a plaintiff shall have sued out a writ in person, or a defendant shall have appeared in person, and either party shall by an attorney of the Court have given notice in writing to the opposite party, or the attorney or agent of such party, of such attorney being authorized to act as attorney for the party on whose behalf such notice is given, all pleadings, notices, summonses, orders, rules, and other proceedings which according to the practice of the Courts are to be delivered to or served upon the party on whose behalf such notice is given shall thereafter be delivered to or served upon such attorney.

#### ATTACHMENT.

168. Rules for attachments shall be absolute in the first instance in the two following cases only; viz., first, for nonpayment of costs on a Master's allocatur; secondly, against a sheriff for not obeying a rule to return a writ or to bring in the body.

#### AWARDS AND ANNUITIES.

169. Where a rule to show cause is obtained to set aside an award or an annuity, the several objections thereto intended to be insisted upon at the time of moving to make such rule absolute shall be stated in the rule to show cause.

170. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

#### MISCELLANEOUS.

171. On a reference to the Master to ascertain the amount for which final judgment is to



be signed, the Master's certificate shall be filed in the office when judgment is signed.

172. On every appointment made by the Master, the party on whom the same shall be served, shall attend such appointment without waiting for a second, or in default thereof, the Master may proceed ex parte on the first appointment.

173. The Masters' offices in the several Courts shall be open in term time, from eleven o'clock in the forenoon till five o'clock in the afternoon, and not in the evening; and in the vacation, from eleven o'clock in the forenoon till three o'clock in the afternoon, except between the 10th day of August and the 24th day of October, when they are to be open from eleven in the morning till two in the afternoon, and except on Good Friday, Easter-eve, Monday and Tuesday in Easter-week, Christmas-day, and the three following days, and such of the four following days as may not fall in the time of term, but not otherwise, namely, the Queen's birthday, the Queen's Accession, Whit Monday, and Whit Tuesday, when the offices shall be closed.

174. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the Courts, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

175. The days between Thursday next before, and the Wednesday next after Easter-day, and Christmas-day and the three following days, shall not be reckoned or included in any rules, notices, or other proceedings, except notices of trial or notices of inquiry.

176. In all causes in which there have been no proceedings for one year from the last proceeding had, the party, whether plaintiff or defendant, who desires to proceed shall give a calendar month's notice to the other party of his intention to proceed. The summons of a Judge, if no order be made thereupon, shall not be deemed a proceeding within this rule. Notice of trial, though afterwards countermanded, shall be deemed a proceeding within it.

#### FORMS OF PROCEEDINGS.

The forms of proceedings contained in the schedule hereunder may be used in the cases to which they are applicable, with such alterations as the nature of the action, the description of the Court in which the action is depending, the character of the parties, or the circumstances of the case may render necessary; but any variance therefrom, not being in matter of substance, shall not affect their validity or regularity.

#### 1.—Form of an Issue in General.

In the Queen's Bench [or "Common Pleas," or "Exchequer of Pleas," as the case may be].

The                      day of                      , in the year of our Lord 18                      (date of declaration).

(The Venue.)—A.B. by P.A. his attorney [or "in person," as the case may be, and as in the declaration] sues C.D., who has been summoned to answer the said A.B. by virtue of a writ issued on the                      day of                      , in the year of our Lord                      , (the date of the first writ) out of Her Majesty's Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas," as the case may be], For, [&c. Copy the declaration from these words to the end, and all the pleadings, with their dates, writing each plea or pleading in a separate paragraph, and numbering the same as in the pleading delivered, and conclude thus:] Therefore let a jury come, &c.

#### 2.—Form of a Nisi Prius Record.

The Nisi Prius record will be a copy of the issue as delivered in the action. It must be engrossed on parchment, and a more convenient shape than that heretofore in use must be adopted.

#### 3.—Form of a Postea on a Verdict for Plaintiff on all the Issues where the Cause is tried in London or Middlesex, and where the Defendant appears at the Trial.

Afterwards on the                      day of                      A.D.                      , (the first day of the sittings) at the Guildhall of the City of London [or "at Westminster Hall, in the county of Middlesex,"] before the Right Honourable John Lord Campbell, Her Majesty's Chief Justice assigned to hold pleas in the Court of our Lady the Queen before the Queen herself, [or if in the Common Pleas, "before the Right Honourable Sir John Jervis, Knight, Her Majesty's Chief Justice assigned to hold pleas in Her Majesty's Court of the Bench," or in the Exchequer, "before the Right Honourable Sir Frederick Pollock, Knight, Chief Baron of Her Majesty's Court of Exchequer,"] come the parties within mentioned by their respective attorneys within mentioned, and a jury of the within county [or "city"] being summoned, also come, who, being sworn to try the matters in question between the said parties upon their oath, say that, [&c., state the affirmative or negative of the issue as it is found for the plaintiff, and in the terms adopted in the pleading.] [If there be several issues joined and tried, then say, "as to the first issue within joined upon their oath say that," (&c., state the affirmative or negative of the issue as found for plaintiff), "and as to the second issue within joined, the jury aforesaid upon their oath say that," (&c., so proceed to state the finding of the jury on

all the issues.)] [Conclude with an assessment of the damages, thus:] And they assess the damages of the plaintiff on occasion of the premises within complained of by him, over and above his costs of suit, to £ , and for those costs to 40s. Therefore, &c.

4.—*The like, where the Cause is tried at the Assizes.*

Afterwards, on the day of A.D. , (the commission day of the assizes), at in the county [or "city"] of , before Sir , Knight, and Sir , Knight, Justices of our said Lady the Queen, assigned to take the assizes in and for the within county [or "city and county," or "town and county," as the case may be], come the parties within mentioned by their respective attorneys within mentioned; and a jury of the said county [or "city and county," or "town and county," as the case may be], being summoned also come, who, being sworn to try the matters in question between the said parties, upon their oath say, that [&c., state the negative or affirmative of the issue as it is found for the plaintiff, and in the terms adopted by the pleading.] [If there be several issues joined and tried, then say, "as to the first issue within joined upon their oath, say, that," (&c., state the affirmative or negative of the issue as it is found for the plaintiff,) "and as to the second issue within joined, the jury aforesaid, on their oath aforesaid, say, that" (&c., so proceed to state the finding of the jury on all the issues.)] [Conclude with stating an assessment of the damages, thus:] And they assess the damages of the plaintiff on occasion of the premises within complained of by him, over and above his costs of suit, to £ , and for those costs to 40s. Therefore, &c.

5.—*Form of a Judgment for Plaintiff on a Verdict in a Town Cause.*

[Copy the Nisi Prius record, and then proceed thus:] Afterwards, on the day of in the year of our Lord , [day of signing final judgment] come the parties aforesaid, by their respective attorneys aforesaid [or as the case may be, if they have not appeared by attorneys], and the Right Honourable Lord John Campbell, Her Majesty's Chief Justice assigned to hold pleas in the Court of our Lady the Queen before the Queen herself, [or if in Common Pleas, "the Right Honourable Sir John Jervis, Knight, Her Majesty's Chief Justice assigned to hold Pleas in Her Majesty's Court of the Bench," or if the Exchequer, "the Right Honourable Sir Frederick Pollock, Knight, Chief Baron of Her Majesty's

Court of Exchequer," or "the Honourable Sir , Knight, before whom the said issue was (or "issues were") tried in the absence of Her Majesty's Chief Justice, &c." as the case may be,] hath sent hither his record had before him in these words: Afterwards [&c., copy the postea]. Therefore it is considered that the plaintiff do recover against the defendant the said monies by the jurors aforesaid in form aforesaid assessed [or if the action be in debt and the jury do not assess the debt, but only the damages and forty shillings costs, then say "do recover against the defendant the said debt of £ , and the monies by the jurors aforesaid in form aforesaid assessed"] : and also £ for his costs of suit by the Court here adjudged of increase to the plaintiff, which said monies and costs [or "debt, damages, and costs,"] in the whole amount to £ .

[In the margin of the roll, opposite the words "Therefore it is considered," write "Judgment signed the day of , A.D. , stating the day of signing the judgment.]

6.—*The like in a Cause tried at the Assizes.*

[Copy the Nisi Prius record, and then proceed thus:] Afterwards, on the day of in the year of our Lord (day of signing final judgment,) come the parties aforesaid, by their respective attorneys aforesaid (or, as the case may be); and Sir , Knight, and Sir , Knight, Justices of our Lady the Queen assigned to take the assizes in and for the said county, or "city and county," &c., as the case may be] before whom the said issue was [or "issues were"] tried, have sent hither their record had before them in these words. Afterwards, [&c. Conclude as directed in the preceding form.]

7.—*Form of an Issue where it is directed to be tried by the Sheriff, &c.*

[Commence the issue as in the form No. 1, above prescribed. Then copy all the pleadings, and after the joinder of issue proceed as follows:] And forasmuch as the sum sought to be recovered in this suit, and indorsed on the said writ of summons, does not exceed 20*l.*, hereupon on the day of , in the year (teste of writ of trial), pursuant to the statute in that case made and provided, the Sheriff [or "the Judge of , being a Court of Record for the recovery of debt in the said county," as the case may be,] is commanded that he summon twelve, &c., who neither, &c., who shall be sworn truly to try the issue [or "issues,"] above joined between the parties aforesaid, and that he proceed to try such issue [or "issues"] accordingly; and

when the same shall have been tried that he make known to the Court here what shall have been done by virtue of the writ of our Lady the Queen to him in that behalf directed, with the finding of the jury thereon indorsed on the day of , &c.

8.—*Form of a Writ of Trial before the Sheriff, &c.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the Sheriff of , [or "to the Judge of , being a Court of Record for the recovery of debt in our county of , as the case may be,] greeting: Whereas A.B. in our Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas," as the case may be] at Westminster, on the (date of first writ of summons) day of in the year of our Lord impleaded C.D. in an action for [&c., here recite the declaration in the past tense,] and the plaintiff claimed £ : And whereas the defendant on the (date of plea) day of last, by his attorney, (or, as the case may be,) came into our said Court, and said [&c., here recite the pleas and pleadings to the joinder of issue:] And whereas the sum sought to be recovered in the said action, and indorsed on the writ of summons therein, does not exceed 20*l.* : and it is fitting that the issue [or "issues"] joined as aforesaid should be tried before you the said Sheriff [or "Judge," as the case may be]: We therefore, pursuant to the statute in such case made and provided, command you that you do summon twelve free and lawful men of your country duly qualified according to law, who are in nowise akin to the plaintiff or to the defendant, who shall be sworn truly to try the said issue [or "issues"] joined between the parties aforesaid, and that you proceed to try such issue [or "issues"] accordingly: and when the same shall have been tried in manner aforesaid we command you that you make known to us [or in the Common Pleas "to our Justices," or in the Exchequer "to the Barons of our said Exchequer," as the case may be,] at Westminster, what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed, on the day of next. Witness [name of the Chief Justice, or of the Chief Baron if the action is in the Exchequer] at Westminster, the day of in the year of our Lord .

9.—*Form of Indorsement on the Writ of Trial of the Verdict.*

Afterwards, on the day of , in the year of our Lord [day of trial] before me, Sheriff of the county of [or "Judge of the Court of "], came as well the within-named plaintiff as the within-named defendant, by their respective attorneys within named, [or, as the case may be,] and the jurors of the jury by me duly summoned, as within commanded, also came, and being duly sworn to try the issue [or "issues"] within mentioned on their oath, said, that [&c. here state the finding of the jury as in a *postea* on a trial at Nisi Prius].

The answer to S. S., sheriff.

10.—*The like in case a Nonsuit takes place.*

[Proceed as in the above form, but after the words "duly sworn to try the issue within mentioned," proceed as follows:] and were ready to give their verdict in that behalf; but the plaintiff being solemnly called, came not, nor did he further prosecute his said suit against the defendant.

11.—*Form of Judgment for the Plaintiff after Trial before the Sheriff.*

[Copy the issue, and then proceed as follows:] Afterwards, on the day of in the year of our Lord [day of signing final judgment], come the parties aforesaid, by their respective attorneys aforesaid [as the case may be], and the said Sheriff, [or "Judge," as the case may be], before whom the said issue [or "issues"] came on to be tried, hath sent hither the said last-mentioned writ, with an indorsement thereon, which said indorsement is in these words; to wit, [copy the indorsement]. Therefore it is considered, &c. [conclude as in other cases. See the form *supra*, No. 5.]

[The remainder of the Schedule consists of twenty-five forms of writs of execution, which it is unnecessary to set forth here, as they will be printed and sold by the Law Stationers.]

# RECENT DECISIONS IN THE SUPERIOR COURTS AND SHORT NOTES OF CASES.

## Lords Justices.

*Ex parte Evans, in re Lougher.* Dec. 17, 1852.

**LANDLORD AND TENANT.—RIGHT OF FORMER TO SIX YEARS' RENT UPON TENANT'S BANKRUPTCY.**

Held, reversing the decision of Mr. Commissioner Bere, that a landlord was entitled to retain six years' rent due under the 3 & 4 Wm. 4, c. 27, s. 42, out of the proceeds of a distress levied before his tenant committed an act of bankruptcy; and that the fact of his having been before the sale thereof adjudged a bankrupt did not affect his right.

Swanston and Roxburgh appeared in support of this appeal from the decision of Mr. Commissioner Bere, disallowing the claim of the landlord of the above bankrupt for more than one year's rent previous to the act of bankruptcy, which took place after a distress had been levied. It appeared, however, that before the goods were sold he was adjudged a bankrupt.

*Rolls for the assignees.*

The Lords Justices said, that the appellant was entitled under the 3 & 4 Wm. 4, c. 27, s. 42, to retain the whole six years' rent due, and allowed the appeal accordingly.

## Master of the Rolls.

*In re Page.* Jan. 11, 1853.

**MARRIED WOMAN.—LEAVE TO SUE IN FORMA PAUPERIS, WITHOUT NEXT FRIEND.**

*Order for leave for married woman to sue in forma pauperis without next friend, where she was living apart from her husband on account of his inability to keep her, upon the usual allegation of her not possessing 5l. &c.*

THIS was a motion on behalf of a married woman for leave to sue in *forma pauperis* without a next friend. It appeared she was living apart from her husband on account of his inability to keep her. There was the usual allegation of her not being worth 5l., &c.

T. H. Terrell, in support, cited *Wellesley v. Wellesley*, 16 Sim. 1.

The Master of the Rolls granted the application.

## Vice-Chancellor Turner.

*Sherwood v. Vincent.* Dec. 8, 22, 1852.

**VIVA VOCE EXAMINATION OF PARTY BY EXAMINER IN SUIT WHERE REFERENCE TO THE MASTER.**

*Order refused on Examiner to proceed with the viva voce examination of one of the*

*parties in pursuance of the Master's direction, where a reference had been made to the Master.*

THIS was an application for an order on the Examiner to proceed with the *viva voce* examination of one of the parties to this cause in pursuance of the direction of the Master to whom it had been referred by the decree to take accounts, direct the production of books, &c., and the examination on interrogatories as he should direct of the parties.

T. H. Terrell in support.

The Vice-Chancellor, after consulting the other Judges, said, the application must be refused.

## Vice-Chancellor Kindersley.

*In re Reed's Trust.* Nov. 11, 1852.

**TRUSTEES' RELIEF ACT.—COSTS OF PETITION FOR PAYMENT OF DIVIDENDS OUT OF CORPUS.**

*Order made for payment out of the corpus of the costs of a petition presented for payment of the dividends of a fund paid into Court under the 10 & 11 Vict. c. 96, to a testator's wife for life for her maintenance and for the maintenance and education of their children.*

THIS was a petition for the payment out of Court of the dividends to the petitioner of a fund paid in under the 10 & 11 Vict. c. 96, and which had been devised by her husband to her for life for her maintenance and the maintenance and education of their children.

Smythe, in support, applied for payment of the costs out of the corpus; C. Hall for the trustees.

The Vice-Chancellor made an order accordingly.

*Jacobs v. Hooper.* Dec. 1, 1852.

**COSTS OF DEMURRER TO BILL.—ORDER TO TAX, WHERE BILL NOT AMENDED.**

*The Order under the 46th Order of May, 1845, for the taxation of the costs of the demurring party is as of course, and not on the application of counsel.*

IN this case the demurrer to the bill had not been set down for argument.

Freeling now applied for costs under the 46th Order of May, 1845, which directs, that "where a demurrer to the whole bill is not set down for argument within 12 days after the filing thereof, and the plaintiff does not within such 12 days serve an order for leave to amend the bill, the demurrer is to be held

sufficient to the same extent and for the same purposes, and the plaintiff is to pay to the demurring party the same costs, as in the case of a demurrer to the whole bill allowed upon argument."

The Vice-Chancellor, in making the order as asked said, that in future similar orders would be taken as of course, without counsel appearing thereon.

*Grimston v. Ozley.* Dec. 23, 1852.

ADMINISTRATION SUIT.—ORDER TO REVIVE AGAINST TRUSTEES UNDER DEVISE FOR SALE OF DECEASED DEFENDANT'S ESTATE, SERVICE OF.

*An order to revive an administration suit upon the death of a defendant entitled to a portion, held sufficiently served on the trustees of such defendant under his will devising his estate in trust for sale, without bringing his children, among whom the proceeds were to be divided, before the Court.*

AN order of course to revive under the 15 & 16 Vict. c. 86, had been made in this administration suit upon the death of a defendant intitled to a fifth share. It appeared such defendant had by his will devised all his real estate to the trustees therein named, in trust to sell, and for a division of the proceeds among his children, and a question now arose whether service of such order was sufficient on the trustees only, under the 42nd section, rule 9<sup>1</sup> of the Act.

G. Lake Russell now applied for the direction of the Court.

The Vice-Chancellor held, that such service was sufficient.

*Sergison v. Livingstone.* Jan. 11, 1853.

PRODUCTION OF DOCUMENTS.—APPLICATION AT CHAMBERS.

*The order for the production of documents, where not opposed, is to be applied for at Chambers.*

THIS was a motion for the production of documents under the 15 & 16 Vict. c. 80, s. 26. The motion was unopposed.

C. Purton Cooper in support.

The Vice-Chancellor said, that a formal affidavit was required before production could be had, and the application should be made at Chambers.<sup>2</sup>

<sup>1</sup> Which provides, that "in all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trusts, parties to the suit."

<sup>2</sup> See *Thompson v. Tenlow*, ante, p. 54.

*Barraud v. Archer.* Jan. 11, 1853.

ENLARGING PUBLICATION.—ORDER FOR.—PRACTICE.

*The order to enlarge publication in a suit should be obtained at Chambers, and not in Court.*

In this motion for the enlargement of publication,

The Vice-Chancellor said, the application should be made at Chambers.

*Vice-Chancellor Stuart.*

*Sergison v. Beavan.* Dec. 6, 1852.

INJUNCTION TO STAY ACTION.—SUBSTITUTED SERVICE OF BILL ON ATTORNEY CONDUCTING SAME.

*Leave given for substitution of service of a bill to stay proceedings at law by the defendant, who was out of the jurisdiction, upon his attorney in such action, without an affidavit of merits.*

J. V. Prior appeared in support of this motion for leave to effect substituted service of a bill to restrain the further proceeding by the defendant with an action at law, upon his attorney, who conducted the same, such defendant being out of the jurisdiction.

By s. 58 of the 15 & 16 Vict. c. 86, it is enacted, that "the practice of the Court of Chancery with respect to injunctions for the stay of proceedings at law shall, so far as the nature of the case will admit, be assimilated to the practice of such Court with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications supported by affidavit, in like manner as other special injunctions are granted by the said Court."

The Vice-Chancellor, granted the motion, and said that an affidavit of merits was no longer necessary.

*Court of Queen's Bench.*

*Castelli v. Boddington.* Nov. 10, 1852.

ACTION TO RECOVER BACK PORTION OF PREMIUMS OF INSURANCE OF CARGO.—BANKRUPT.—WHETHER PASSES TO ASSIGNEES.

*The plaintiff insured a cargo from Havannah to the Baltic, with a proviso for a return of a portion of the premium, if the cargo were delivered at any port south of the Baltic. The cargo was sold and the policy assigned before, and the cargo was delivered in England after, the plaintiff's bankruptcy: Held, that he was entitled to recover back a portion of such premiums in an action brought by him as trustee for the purchaser, and that the right of action did not pass to the assignees.*

THE plaintiff had effected a policy with the defendant for the insurance of a cargo from Havannah to the Baltic, but with a proviso for the return of a portion of the premium paid if

such cargo were delivered at any port south of the Baltic. It appeared that the goods had been sold to a purchaser together with the policy, and were delivered in England, but that the delivery was after the plaintiff had become bankrupt; and the plaintiff now brought this action to recover back as trustee for the purchaser a portion of the premiums.

*Watson and Heath*, for the plaintiff, in support of a rejoinder to a replication to a plea of the plaintiff's bankruptcy; *Bramwell* and *J. Wilde* for the defendant, contra.

The Court held, that the plaintiff was entitled to recover, and that such right did not pass to his assignees.

### Court of Common Pleas.

*Barringer v. Handley*. Nov. 16, 1852.

COMMON LAW PROCEDURE ACT.—RULE TO PROCEED AS IF WRIT SERVED.

*Rule absolute in the first instance to proceed against a defendant in an action as if personal service of the writ had been effected under the 15 & 16 Vict. c. 76, s. 17, where it clearly and satisfactorily appeared that every endeavour had been made to effect the*

*service, but that the defendant kept out of the way.*

THIS was a motion for leave to proceed against the defendant in this action as if personal service of the writ had been effected. Every endeavour had been made to effect such service, but without success, the defendant keeping out of the way to avoid service.

*Prentice*, in support, referred to s. 17 of the 15 & 16 Vict. c. 76, which enacts, that "it shall be lawful for the plaintiff to apply, from time to time, on affidavit, to the Court out of which the writ of summons issued, or to a Judge, and in case it shall appear to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same, and has not appeared thereto, it shall be lawful for such Court or Judge to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the Court or Judge may seem fit."

The Court said, that as the statements in the affidavits were clear and satisfactory, the rule might be absolute in the first instance.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### REGISTRATION OF ELECTORS' APPEALS.

#### BOROUGH REGISTRATION.

1. *What constitutes a "building" within the Statute.*—*A.* occupied, under one landlord, at the yearly rent of 10*l.*, "a stable, with a hay-loft over, built of brick, annexed to which, but of a lower elevation, was another brick building, to which again was annexed an irregular wooden building divided into three compartments." The whole were in the exclusive occupation of *A.*, and were used by him for the purpose of his business of a wheelwright; but the access to each was by a door opening into a yard, also in *A.*'s exclusive occupation, there being no internal communication, except between two of the compartments of the wooden building: *Held*, that the premises constituted a "building" within the 2 Wm. 4, c. 45, s. 27. *Pownall v. Dawson*, 11 C. B. 9.

2. *Freeman's vote.*—*Practice.*—*Decision reversed, the respondent's counsel declining to support it.*—*A.*, a freeman of the borough of Shrewsbury, paying scot and lot for upwards of two years last past, and down to the 25th of March, 1851, occupied and resided in a house on the Wyle Cop, within the ancient and present limits of the borough, and, since the 25th of March, down to and on the 31st of July, occupied and resided in a house at Cotton Hill, without the ancient, but within the present limits of the borough. The revising barrister holding him to be disqualified by the 2 m. 4 W,

c. 45, s. 32, expunged his name from the list of freemen voters: the Court, without hearing any argument (the counsel for the respondent admitting that he could not support it), reversed the decision. *Jarvis v. Peele*, 11 C. B. 15.

3. *Description of qualification in a notice of claim.*—*Amendment.*—Where there is an inaccuracy in the description of the qualification in a notice of claim to be inserted in a list of borough voters, the proper course for the revising barrister is, not to amend the claim (under the 6 & 7 Vict. c. 18, s. 40), but to treat the notice as sufficient, provided the mistake or misdescription is such as would have been amendable if in a list of voters. *Eadem v. Cooper*, 11 C. B. 18.

4. *Practice.*—*Non-delivery of paper books.*—The Court refused to hear an appeal, or to allow it to stand over, where the appellant had failed, on the respondent's default, to deliver copies of the case to the two junior Puisne Judges. *Sheddon v. Butt*, 11 C. B. 27.

#### COUNTY REGISTRATION.

*Member of a building society.*—8 H. 6, c. 7.—*What a "charge" upon the land, within the meaning of the Statute.*—An allottee of three shares in a building society, in October, 1850, purchased freehold land of the value of 6*l.* per annum. The amount of the purchase-money and expenses (84*l.* 14*s.*) was advanced to him by the society upon mortgage of the land so purchased.

By the rules of the society, each member was required to pay 1s. 6d. weekly for each share, and to execute to the trustees a mortgage to secure to them the sum in which the member may be indebted to the society, "with a premium for prior advance equal to 5l. per cent. per annum upon the amount advanced until repaid, and such sum, not exceeding 2s. 6d. per share per annum, for incidental expenses, as the committee should think fit," such mortgage reserving to the trustees a power of sale, in case the member should fail for 26 weekly meetings to pay, observe, and perform all or any of the subscriptions, payments, covenants, agreements, and regulations, on his part to be paid, observed, &c.

No default had been made in the payment of the contributions required by the rules; and the mortgagor had always been, and still remained, in actual possession of the property. The amount of principal money due to the society on the 30th of January, 1851, was 47l. 10s. 3d.

The weekly contributions of 1s. 6d. per share (amounting to 11l. 14s. per annum) were appropriated by the society thus:—8l. 18s. in part liquidation of the principal mortgage debt, 2l. 10s. for premium or interest, and 6s. for incidental expenses.

*Held*, that these contributions constituted a "charge" upon the land, within the meaning of the Stat. 8 H. 6, c. 7, and consequently that the mortgagor was not possessed of an estate "of the clear yearly value of 40s. at the least, above all charges." *Beamish v. Overseers of Stoke*, 11 C. B. 29.

Cases cited in the judgment: *Lee v. Hutchinson*, 8 C. B. 16; 2 Lutw. Reg. Cas. 159; *Copland v. Bartlett*, 6 C. B. 18; 2 Lutw. Reg. Cas. 102.

#### DISSENTING MINISTER.

*Occupation of premises.*—The minister of a dissenting congregation, whose appointment, according to his own statement, was "general, and for life," occupied, by permission of the trustees, in whom the legal estate was vested, without paying any rent, a cottage and premises worth more than 40s. per annum. The revising barrister, considering that it was established, in point of fact, that the minister held the office and occupied the house and premises under the trusts of the deed, and therefore had such a freehold interest therein as entitled him to vote, retained his name on the list of voters: *Held*, that he had come to a right conclusion. *Burton v. Brooks*, 11 C. B. 41.

#### NON-APPEARANCE ON APPEAL.

*Hearing appeal where respondent does not appear.*—The Court will not reverse the decision of the revising barrister, without hearing the appellant's counsel, although the respondent does not appear to support it. *Pownall v. Hood*, 11 C. B. 1.

#### NOTICE.

*Hearing adjourned, where case delivered out*

*by barrister too late to enable appellant to give notice required by Statute.*—The Court adjourned the hearing of an appeal, in order to give the appellant time to give the notice required by the Stat. 6 & 7 Vict. c. 18, ss. 42, 64, the case not having been settled and delivered to the appellant until the 8th day of Term. *Burton v. Blake*, 11 C. B. 47.

#### SIGNATURE OF CASE BY BARRISTER.

1. Where the case transmitted to Master under the 6 & 7 Vict. c. 18, ss. 42, 64, is not signed, as well as indorsed, by the revising barrister, the Court will not hear the appeal, unless the respondent consents to the case being remitted to him for signature. *Burton v. Brooks*, 11 C. B. 41.

2. Where the case transmitted to the Master under the 6 & 7 Vict. c. 18, ss. 42, 64, is not signed, as well as indorsed, by the revising barrister, the Court will not hear the appeal, where the respondent does not appear. *Burton v. Blake*, 11 C. B. 47.

#### TIDE-WAITER.

*Extra or glut tide-waiter disqualified as voter.*—22 Geo. 3, c. 41, s. 1.—An extra or glut tide-waiter,—one who is appointed by the collector of customs, and liable to be called upon to act as a tide-waiter whenever there may be occasion for his services, and who is paid by the job,—is an officer or person "concerned or employed in the charging, collecting, levying, or managing the customs," within the 22 Geo. 3, c. 41, s. 1, and consequently disqualified as a voter. *Pownall v. Hood*, 11 C. B. 1.

### COUNTY COURTS' JURISDICTION AND APPEALS.

#### ABOLISHING LOCAL COURTS.

*Power of the Crown.*—The Queen in Council has power, under Stat. 9 & 10 Vict. c. 95, to abolish the several Courts mentioned in Schedules A. and B. to that Act, without changing them into Courts to be holden as County Courts. *Regina v. Dyer*, 13 Q. B. 851.

#### APPEAL.

*Clerk, dismissal of.*—*Set-off.*—A. was clerk to B. under an agreement for a salary of 140l. a year, determinable by three months' notice, or payment of three months' salary. B. dismissed A. without notice, under circumstances which a County Court Judge decided not to be a legal justification for such dismissal, and afterwards sued him for money had and received: *Held*, upon an appeal under the 13 & 14 Vict. c. 61, s. 14, that A. was entitled to set-off in that action the amount of the three months' salary; and that the decision of the County Court Judge upon the facts could not be reviewed.

*Semble*, per *Maule, J.*, that the convenient construction of the 14th section would be, that an appeal lies not in any case where the County Court Judge performs the functions of a jury. *East Anglian Railway Company v. Lythgoe*, 10 C. B. 726.

**"CARRYING ON BUSINESS."**

*Clerk of Privy Council.*—A clerk to the Privy Council is not a person who "carries on his business" at the office of the Privy Council, within the meaning of the 60th section of the County Courts Act, 9 & 10 Vict. c. 95. *Sangster v. Kay*, 5 Exch. R. 386.

**CLERK OF COURT.**

*What is an inability for which the Judge may remove him.*—A County Court clerk removed for inability or misbehaviour, under Stat. 9 & 10 Vict. c. 95, s. 24, may question the validity of such removal by information in the nature of a *quo warranto* against his successor.

A plea to such an information alleged, that the clerk was removed for inability. The replication traversed the inability; on which issue was joined. By a special verdict it was found that the clerk was dismissed for inability: that such inability was very great pecuniary embarrassment and want of money to pay his debts, existing before and at the time of his dismissal: that no other inability existed; and that he was not, nor had been, imprisoned for debt, or physically disabled from performing his duties.

*Held*, that such pecuniary embarrassment did not in itself constitute inability; and that the relator was entitled to judgment. *Regina v. Owen*, 15 Q. B. 476.

**COMMITMENT.**

1. *Nonpayment of a sum due on an unsatisfied judgment, notwithstanding debtor has since obtained final order for protection as an insolvent.*—*Semble*, that a judgment obtained in a County Court, in respect of which the debtor subsequently obtains a final order of protection from the Insolvent Debtors' Court, does not thereby cease to be an *unsatisfied judgment*, within the meaning of the 98th sect. of the 9 & 10 Vict. c. 95. *Esparte Purdy*, 9 C. B. 201.

2. *"Gift, delivery, or transfer of property, with intent," &c.*—An order of commitment under the County Court Act, 9 & 10 Vict. c. 95, is not to be construed with the same strictness as a conviction; and such an order is not bad for alleging the defence to be, that the defendant had made "a gift, delivery, or transfer of property, with intent to defraud his creditors."

The order recited a judgment recovered against the defendant in the County Court; it then recited that the defendant, *having personally appeared to the said summons*, and being present in Court, and having neglected to pay the sum recovered, was, upon the application of the plaintiff, *then and there examined touching his estate, &c.*; that it appeared to the Judge, upon such examination, that the defendant had obtained credit from the plaintiff under false pretences, and had made "a gift, delivery, or transfer of property with intent to defraud his creditors," but the defendant requested to be allowed time to produce evidence; that the hearing was thereupon adjourned; that the defendant did not

attend on the adjournment day; that it *then* appeared to the satisfaction of the Judge, that the defendant had obtained credit from the plaintiff under false pretences, and had made "a gift, delivery, or transfer of property with intent to defraud his creditors;" and that thereupon the Judge ordered and adjudged that the defendant should be committed for 40 days, &c.

*Held*, that the recitals in the order imported an appearance by the defendant at the trial, and an examination of the defendant at that time, and consequently that it was a valid order within the 101st section of the Act; and that a summons under the 98th and 99th sections was unnecessary. *Esparte Purdy*, 9 C. B. 201.

3. *Validity of warrant.*—A warrant of commitment for contempt, under the 9 & 10 Vict. c. 95, s. 99, for non-appearance on a judgment summons, is regular, though issued more than six months after the date of the Judge's order, notwithstanding that, by the 37th Rule of Practice of County Courts, a warrant is to be current only for two months *after its date*. *Esparte O'Neill*, 10 C. B. 57.

*See Warrant of Commitment.*

**COSTS.**

*Plaintiff's right.*—*Judgment on demurrer.*—*"Verdict."*—A judgment on demurrer is not a judgment by default within the meaning of the 13 & 14 Vict. c. 61, s. 11.

Where, therefore, a plaintiff recovered less than 20*l.* upon an assessment of damages upon a writ of inquiry after a judgment on demurrer: *Held*, that he was not entitled to costs.

*Quære*, whether the word "verdict," in s. 12, is limited to a verdict upon an issue joined? *Prew v. Squire*, 10 C. B. 912.

Case cited in the judgment: *Taylor v. Rolf*, 5 Q. B. 337; 1 *Day. & Meriv.* 229.

**DEFENDANT'S PLACE OF BUSINESS.**

*Deputy Sealer in Chancery.*—The Deputy Sealer in the Court of Chancery performed his duty of affixing the Great Seal to certain instruments, in a room called the Sealer's room, adjoining the Court at Westminster or Lincoln's Inn, where the Lord Chancellor sat for the time being; or in a room called the Sealer's room at the House of Lords when the Lord Chancellor attended the House judicially; and at other times in the Great Seal Patent Office, Quality Court, Chancery Lane.

*Held*, that the Sealer's room or office, not being a fixed place, but shifting with the avocations of the Lord Chancellor, could not be deemed a place of business for the purpose of giving jurisdiction to a County Court within sect. 128 of Stat. 9 & 10 Vict. c. 95.

And *quære*, whether the duty performed by the Deputy Sealer was a business at all, within that section. *Rolfe v. Learmouth*, 14 Q. B. 196

**FALSE IMPRISONMENT.**

*Justification under process of County Court executed on wrong person.*—In trespass for



false imprisonment, defendant pleaded that he sued out a summons against the plaintiff in the County Court for debt, that the summons was personally served upon plaintiff, that he did not appear; and that it was adjudged that he should pay the debt by instalments; that a minute of the judgment was served upon him, and that the instalments were not paid; that a fraud summons was then obtained and served upon him; that he did not appear, and was committed by the judge to prison; justification under the process, &c. *Replication de injuriâ*, and issue thereon.

The evidence in support of this issue was, that the defendant, having a debt due from one J., entered a plaint against him in the County Court by his right name, which was an entirely different name from the plaintiff's, and that he served the plaintiff with the several proceedings, which were all directed against J. by name, under the belief that the plaintiff was J.; that J. never appeared in Court; that plaintiff uniformly stated that he was not J., and, on the service of such proceeding, gave notice of the mistake; but that defendant directed the officer to take plaintiff: *Held*,

That, as the proceedings were against J. by name, and were intended to be against him, and were served upon the plaintiff only by reason of a mistaken supposition that he was J., the plea was not proved.

That whether commitment on a fraud summons under the County Courts Act, 9 & 10 Vict. c. 95, s. 99, be in the nature of punishment or execution, the defendant was responsible for the wrongful imprisonment under it. *Walley v. McConnell*, 13 Q. B. 903.

#### INCORPOREAL HEREDITAMENTS.

*Paving rate.*—*Held*, that a paving rate was not an incorporeal hereditament, and might be sued for in a County Court. *Baddeley v. Denton*, 7 D. & L. 210.

#### INTERPLEADER.

1. *Stay of proceedings in Superior Court, after interpleader adjudication, against the claimant.*—Goods were seized in the house of J., under a warrant of execution from a County Court, in an action against M. J. claimed the goods. The Judge of the County Court, on interpleader summons, adjudicated that they belonged to M. J. then sued the officer who had seized, in the Queen's Bench, in trespass for entering his premises and seizing the goods.

*Held*, that, under sec. 118 of Stat. 9 & 10 Vict. c. 95, a Judge might stay the action in Queen's Bench, it not being shown that there was any cause of complaint besides that of entering the premises to seize the goods.

*Seem*, that it would have been otherwise if the adjudication in the County Court as to the goods had been in favour of J., the claimant. *Jessep v. Crawley*, 15 Q. B. 212.

Case cited in the judgment: *Tinkler v. Hilder*, 4 Exch. 187.

2. *Stay of proceedings in a Superior Court, after interpleader adjudication in claimant's*

*favour.*—Where an interpleader summons under Stat. 9 & 10 Vict. c. 95, s. 118, in respect of goods taken in execution, has been decided in favour of the claimant, an action of trespass may afterwards be brought for breaking and entering the premises in which the goods were seized. *Cater v. Chignell*, 15 Q. B. 217.

3. *Notice under sect. 118, by Rule 30 of practice, framed under sect. 78.*—*Grounds of claim.*—By sect. 118 of Stat. 9 & 10 Vict. c. 95, the County Court has power to adjudicate on any claim in respect of goods taken in execution under its process. And by Rule 39, framed by the Judges in pursuance of sect. 78, the claimant is to deliver "a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim."

*Held*, that the rule is authorised by sect. 78; and that, under such rule, it is not sufficient to state that the goods are, and were when taken, the property of the claimant, and not the property of the execution debtor. *Regina v. Chilton*, 15 Q. B. 220.

#### JUDGE.

*Appointment of same Judge for several districts.*—The Lord Chancellor, by one appointment, under Stat. 9 & 10 Vict. c. 95, appointed the same person to be Judge of the County Court in several districts situate in the county of W., and in several districts situate in the county of H.

*Held*, that the appointment was valid. *Regina v. Parham*, 13 Q. B. 858.

#### LONDON.

*Plaintiff's right to costs.*—*Tender and payment into Court.*—It is no ground for a suggestion under the London Small Debts Act, 10 & 11 Vict. c. lxxi. s. 113, that the debt has been reduced below 20*l.* by a payment into Court under a plea of tender. *Crosse v. Seaman*, 10 C. B. 884.

#### NOTICE OF ACTION,

*For thing done in pursuance of act.*—The 138th section of the County Courts Act, 9 & 10 Vict. c. 95, enacts, that in actions and prosecutions to be commenced against any person for anything done in pursuance of the act, notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action.

In case against a Judge of a County Court for making an order for committing the plaintiff to gaol for disobedience of an order for payment of certain instalments, after due service upon him of a writ of prohibition, the jury were told, that, if the defendant acted under a *bonâ fide* belief that his duty as Judge of the County Court, rendered it incumbent on him to do so notwithstanding the prohibition, the act must be considered as done in pursuance of the County Court Act, and he was entitled to notice of action.

*Held*, no misdirection.

Where in such a case, the Judge, in the

presence of the counsel, directs a verdict for the defendant, but at the same time tells the jury to assess damages for the plaintiff contingently, and the counsel do not object,—it is not competent to the plaintiff afterwards to move for a new trial on the ground of misdirection—he can only move to enter a verdict for damages so contingently assessed. *Booth v. Clive*, 10 C. B. 827.

Cases cited in the judgment: *Horn v. Thornborough*, 3 Exch. R. 846; *Hughes v. Buckland*, 15 M. & W. 346; 3 D. & L. 702; *Kine v. Evershed*, 10 Q. B. 143; *Wedge v. Berkeley*, 6 Ad. & E. 663; 1 N. & P. 665; *Hopkins v. Grove*, 4 Ad. & E. 774; 7 Car. & P. 373.

#### PROHIBITION.

1. *Apothecaries' Act*, 55 Geo. 3, c. 194.—By a plaintiff in a County Court, the defendant was summoned for a debt of 20*l.*, “for illegally practising as an apothecary.” The particulars stated, that the action was brought to recover 20*l.*, for that, after the 55 Geo. 3, c. 194, the defendant on divers days acted as an apothecary, without a certificate, at four places named, by attending and supplying medicine to four persons mentioned, whereby the defendant had forfeited the sum of 20*l.*

By the 55 Geo. 3, c. 194, s. 20, any person who shall practise as an apothecary without a certificate, shall forfeit “for every such offence” 20*l.*: *Held*, on motion for a prohibition, that, whether the facts stated in the particulars amounted to four offences, or one only, the sum recoverable was limited by the summons and particulars to 20*l.*, and therefore the County Court had jurisdiction. *In re Apothecaries' Company v. Burt*, 5 Exch. R. 363.

2. *Cause of action.—Bill of exchange.*—A bill of exchange was drawn by plaintiff at Norwich upon the defendant in London. The defendant then wrote upon it his acceptance, “payable at R. & Co., London,” and sent it back by post to plaintiff at Norwich. At maturity the bill was dishonoured and returned to plaintiff at Norwich. The latter having sued the defendant upon the bill in the County Court of Norfolk,

*Held*, upon motion for a prohibition, that the County Court had no jurisdiction, as “the cause of action,” within the meaning of those words in 9 & 10 Vict. c. 95, s. 60, did not arise within the district of that Court. *Regina v. Birch*, *in re Wilde v. Sheridan*, 1 L. & M. 56.

#### SET-OFF.

See Appeal.

#### STANNARIES COURT.

*Concurrent jurisdictions.*—Under the County Courts' Act, 9 & 10 Vict. c. 95, ss. 53, 141, the County Court have so far concurrent jurisdiction with the Vice-Warden's Court, established for the Stannaries by charter and by Stat. 6 & 7 Wm. 4, c. 106, that a tinner sued in the County Court cannot object to the jurisdiction on the ground that the cause is one cognizable by the Court of the Vice-Warden;

the exemption of the tinner from the County Court jurisdiction by reason of mere personal privilege being taken away by Stat. 9 & 10 Vict. c. 95, s. 67. *Newton v. Nancarrow*, 15 Q. B. 144.

#### SUPERIOR COURTS.

*Courts of Record.*—*Semble*, that the Courts created under the 9 & 10 Vict. c. 95, though Courts of Record are not superior Courts. *Levy v. Moylan*, 10 C. B. 189.

#### TITLE TO ROLL.

*Railway company.—Charge for empty waggons.*—In a plaintiff brought in a County Court against a railway company to recover damages for expense and loss of time sustained by the plaintiff in consequence of the improper omission of the company to convey goods on their line, a question was raised as to the right of the company to charge toll for empty waggons: *Held*, that the “title to toll” did not thereby come into question, within the meaning of the proviso in the 9 & 10 Vict. c. 95, s. 58. *Hunt v. Great Northern Railway Company*, 10 C. B. 900.

#### WARRANT OF COMMITMENT.

1. *Alternative warrant.*—Plea to an action by A. against B. for false imprisonment,—that a judgment was recovered by B. against A. in the County Court, for a sum ordered to be paid by instalments; that A. was summoned, under s. 98 of the 9 & 10 Vict. c. 95, to show cause why he had not paid the instalments; that he appeared to the summons, and that the Judge ordered him to pay the debt and costs on a given day, or, in default, that he should be committed for 20 days; and that he made default, and was thereupon arrested, and carried to gaol, &c.: *Held*, *bad*. *Abley v. Dale*, 10 C. B. 62.

2. *Payment on future day, or in default to be committed.—Second summons.*—*Held*, that a party ordered to pay a sum recovered against him in the County Court, who has made default, and, upon being examined upon a judgment summons, shows no sufficient excuse for such default, may be committed to prison forthwith; but that, if the Judge orders him to pay the money at a future day, or in default, to be committed, and the party again makes default, he cannot be committed without being examined as to the cause of such second default. *Abley v. Dale*, 10 C. B. 62.

Case cited in the judgment: *Exparte Kinning*, 4 Exch. R. 87.

3. *Insulting Judge.—Justification of arrest.*—A warrant of commitment under the 9 & 10 Vict. c. 95, s. 113, recited that A. “did wilfully insult the Judge of the County Court, during his sitting, and therefore the said Judge did order that A. should be taken into custody, and detained until the rising of the Court.” It then proceeded:—“These are, therefore, to require you, the high-bailiff, &c., to take the said A., and to deliver him to the governor of the house of correction.” &c., to

be there detained for seven days, &c.: *Held*, that the warrant was good upon the face of it, and justified the officer and the gaoler in taking and detaining *A. Levy v. Moylan*, 10 C. B. 189.

Case cited in the judgment: *Sheriff of Middlesex's case*, 11 Ad. & E. 287.

See *Commitment*.

## BILLS OF EXCHANGE.

1. *Interest on bill not produced at trial*.—In assumpsit by indorsee of a bill against acceptor, defendant pleaded only new matter by way of confession and avoidance, but failed to establish the matter of avoidance.

*Held*, that plaintiff could not recover interest upon the bill from the date of its maturity, as stated in the declaration, without producing it. *Hutton v. Ward*, 15 Q. B. 26.

2. *Action by drawer's indorsee, as trustee for drawer, after dishonour and payment by drawer*.

—If the drawer of a bill payable to his own order indorses it, and it is accepted and dishonoured, the drawer, having received it back and paid the amount to his indorsee, may return the bill to such indorsee for the purpose of his suing the acceptor upon it as trustee for the drawer. And the payment is no answer to an action by such indorsee, if there be evidence that, when the drawer paid, the bill was left in the hands of the indorsee for the purpose of its being put in suit. *Williams v. James*, 15 Q. B. 498.

3. *Plea, that plaintiff is both indorser and indorsee*.—*Replication*.—*Departure*.—*Declaration by O. M.*, stating that *B.* made his promissory note for 23*l.*, payable "to the order of *O. M.*" three months after date, and delivered it to "the said *O. M.*," and "the said *O. M.*" indorsed to defendant, and defendant indorsed to plaintiff: dishonour and notice. *Plea*, that *O. M.*, stated in the count to have indorsed to defendant, and the plaintiff, are one and the same person.

*Replication*, That, before the indorsement, &c., *B.* was indebted to plaintiff in 23*l.*, and it was agreed between plaintiff and *B.*, at *B.*'s request, he being unable to pay, that he should give plaintiff, who would accept and take, on account of such debt, *B.*'s note for 23*l.*, payable at three months, which time plaintiff should give for payment, provided *B.* would procure defendant to indorse the note for the purpose of securing payment, and by way of guarantee; of which premises defendant had notice, and assented and agreed thereto; and thereupon, in pursuance of the agreement, *B.* made and delivered the note to plaintiff, on account, &c., and plaintiff, in furtherance of the agreement and not otherwise, and without any consideration or value in that behalf indorsed to defendant as in the declaration mentioned, in order that defendant might, in pursuance and furtherance of the agreement, and not otherwise, indorse the same note to plaintiff for the purpose aforesaid; and defendant accordingly, in pursuance of the agreement and

for the purposes aforesaid and not otherwise, indorsed the same to plaintiff, which is the indorsement to him in the declaration mentioned.

*Held*, on demurrer, no departure, and an answer to the plea. *Morris v. Walker*, 15 Q. B. 589.

Cases cited in the judgment: *Smith v. Marsset*, 6 C. B. 486; *Bishop v. Hayward*, 4 T. R. 470; *Britton v. Webb*, 2 B. & C. 483. ¶

4. *What is an indorsement*.—*Bond fide holder*.—Assumpsit by indorsee against acceptor, averring indorsement by drawer to *M.*, and by *M.* to plaintiff. *Pleas*, traversing the indorsements.

The jury found that the drawer wrote his name on the bill and handed it to *M.*, that *M.* might get it discounted, which was not done; and that plaintiff received it from *M.*, when overdue, and without consideration.

*Held*, that there was no indorsement by drawer to *M.*, and that defendant was entitled to have the verdict entered for him on the issue as to that indorsement, plaintiff not being a *bond fide* holder.

*Semble*, per Lord Campbell, C. J., that, if plaintiff had been a *bond fide* holder before maturity, defendant would have been precluded, as against him, from requiring further proof of a prior indorsement than the proof of handwriting; and that, on this supposition, the issue as to *M.*'s indorsement ought to have been found for plaintiff. *Lloyd v. Howard*, 15 Q. B. 995.

5. *Action by indorsee from a mala fide holder*.—*Proof of mala fides*.—Assumpsit on a bill of exchange drawn on defendant, and accepted by him, indorsed by drawer to *C.*, and by *C.* to plaintiff.

*Plea*, that the bill was drawn for defendant's accommodation, and was indorsed in blank by drawer and delivered to defendant that he might get it discounted for his accommodation. That defendant delivered it to *M.* to get it discounted, and hand the proceeds to defendant; that *M.* delivered the bill to *C.* that *C.* might get it discounted for defendant; that *C.* in violation of such purpose, and against good faith, and without the authority of defendant or *M.*, indorsed to plaintiff without consideration; and that plaintiff held without consideration. *Replication de injuriâ*: issue thereon.

On the trial, defendant proved as follows.—The bill was drawn for defendant's accommodation, as alleged, and was by him delivered to *M.* to get it discounted for defendant. *M.* gave the bill to *C.* to get it discounted for defendant. *C.* took the bill away, promising to get it discounted, and to bring back the money for it in a few hours, but did not return. Next day *M.* saw *C.*; and *C.* then promised to bring the money for the bill immediately: he then went away, professedly for the purpose of fetching the money, and had not been seen since; and defendant never received anything on account of the bill: *Held*,

That this amounted to evidence that *C.*, who indorsed to plaintiff, was a *mala fide* holder; and that the jury might, if they thought right,

infer from thence that plaintiff had not given value. *Smith v. Braine*, 16 Q. B. 244.

Case cited in the judgment : *Bailey v. Bidwell*, 13 M. & W. 73.

6. *What is a bill of exchange.—Order to pay “90 days after sight, or when realised.”*—An order for a sum “payable 90 days after sight, or when realised,” is not a bill of exchange, as the latter alternative makes the sum payable on a contingency. *Alexander v. Thomas*, 16 Q. B. 333.

7. *Plea of gaming consideration.—Variance.—Amendment.*—Stat. 5 & 6 Wm. 4, c. 41, s. 1.—8 & 9 Vict. c. 109, s. 18.—“To a declaration by drawer against acceptor of two bills of exchange for 50*l.* each, defendant pleaded that he accepted the bills at the request of a third person, to whom he had lost 100*l.* by gaming, and in consideration of the sum so lost; that there was no other consideration: and that the plaintiff, when the said bills were drawn and accepted, had notice of the gaming consideration. Replication *de injuria*. It appeared on the trial that the defendant at first accepted, in consideration of the gaming transaction, a bill drawn by the plaintiff for a 100*l.*, which was dishonoured, and the plaintiff then gave him time, and took the acceptances declared upon, by way of renewal; and that the plaintiff at that time knew of the gaming transaction.

*Held*, no material variance, the evidence showing sufficiently that the acceptances declared upon were given for the original gaming consideration: *Held*, also, not material that the latter acceptances were given partly on a new consideration, namely, the extension of time for payment.

*Quere*, whether, if the objection had been well founded, the variance, supposing the facts undisputed, could have been amended at Nisi Prius, under Stat. 3 & 4 Wm. 4, c. 42, s. 23, *Semble*, per Lord Campbell, C. J., that it could.

*Held*, also, that the validity of the above plea was not affected by Stat. 8 & 9 Vict. c. 109, c. 18, which makes the contract, but not a security void: for that, under Stat. 5 & 6 Wm. 4, c. 41, s. 1, the consideration for the security is illegal; and the plaintiff here was not a *bona fide* holder. *Hay v. Ayling*, 16 Q. B. 423.

8. *Form of acceptance by directors of joint-stock company, under Stat. 7 & 8 Vict. c. 110, s. 45.*—Under Stat. 7 & 8 Vict. c. 110, s. 45, if a bill of exchange drawn upon a joint-stock company regulated by that Act be accepted by two of the directors, the acceptance is void as against the company, if not “expressed,” “to be accepted” by such directors “on behalf of such company,” though the clause does not contain any words of nullification.

But, where a bill, drawn upon the company by their corporate name, and sealed with their seal, having the name of the company circumscribed, was accepted by two persons styling themselves directors of the company, appointed to accept that bill, and the acceptance was countersigned by the company’s secretary,

*Held*, that such acceptance was sufficiently expressed. *Halford v. Cameron’s Coalbrook Steam Coal and Swansea and Loughor Railway Company*, 16 Q. B. 442.

9. *Plea of fraud and covin.—Illegality of consideration.*—*Forbearance to prosecute a charge of felony.*—To a count on a promissory note made by the defendant, payable to the order of A., and indorsed by A. to B., and by B. to the plaintiff, the defendant pleaded that the note was obtained from him by D. and others in collusion with him, by fraud; that there was no consideration for the indorsement by A. to B.; and that the plaintiff had notice of the fraud: *Held* bad, there being nothing to impeach A.’s title to the note.

A further plea stated, that the consideration for the note was the forbearance to prosecute the defendant’s son upon a charge of felony,—not averring that a felony had been committed, or affecting A., the payee, with notice of the alleged illegality of the consideration: *Held* bad. *Masters v. Ibberson*, 8 C. B. 100.

10. *Payable at a particular place.—Excuse for non-presentment.*—In debt by the payee against the maker of a promissory note payable at “No. 11, Old Slip,” the declaration stated, that “when the said promissory note became due, to wit, on, &c., the plaintiffs were ready and willing in due manner to present the said note to the defendant, at the said No. 11, Old Slip, for payment, and then and there to demand of the defendant payment of the said note, and the plaintiffs would have duly presented the same to the defendant, and demanded payment thereof accordingly, but the defendant was then absent from, and not to be found at, the said No. 11, Old Slip, and had then clandestinely departed and absconded from thence, without leaving or having left any effects at the said place, or any means or provision there for the payment of the said note, nor were there any effects of the defendant at the said No. 11, Old Slip, nor any means or provision there for payment of the said note, and the defendant did not pay the said note, when it became due,” &c.

*Held*, that the declaration failed to disclose a cause of action, by reason of the note not having been presented according to its exigency, and no sufficient legal excuse being shown for the omission. *Sands v. Clarke*, 8 C. B. 751.

Case cited in the judgment : *Bowen v. Howe*, 5 Taunt. 30.

11. A promissory note, described in the body of it as “payable on the last day of October. At A. B.’s,” must, by the Law of England, be presented at the place named; and the latter words are not to be treated as a mere memorandum, because separated from the former by a full point. *Vander Donckt v. Thellusson*, 8 C. B. 812.

12. *Evidence.—Foreign law may be proved by a layman.*—The law of a foreign country on a given subject, may be proved by any person who (though not a lawyer or a person who, by reason of his having filled any public office,

may be presumed to be acquainted with the law) is, or has been, in a position to render it probable that he would make himself acquainted with it.

Therefore, an hotel keeper in London, a native of Belgium, who stated that he had formerly carried on the business of a merchant and commissioner of stocks in Brussels, was permitted to prove the law of Belgium on the subject of the presentment of a promissory note made in that country payable at a particular place. *Vander Donckt v. Thellusson*, 8 C. B. 812.

Cases cited in the judgment: *The Sussex Peerage case*, 11 Cl. & Fin. 85, 134.

13. *Custom as to remitting foreign bills.*—The purchaser or remitter in London, of a foreign bill, getting from the drawer, according to the usage in London, credit until the next foreign post day for the amount, and delivering the bill to the payee, who receives it *bonâ fide* and for value, the drawer is liable for the amount to the payee, although, in consequence of the purchaser or remitter's failure before the next foreign post day, the drawer never receives value for it. *Munroe v. Bordier*, 8 C. B. 862.

14. *Indorsement by partners, sufficiency of.*—A. and B. carried on business in partnership. The firm being indebted to C., A. (who acted as C.'s agent), with the concurrence of B., indorsed a bill of exchange in the name of the firm, and placed it amongst the securities which he held for C., but no communication of the fact was made to C.: *Held*, a good endorsement by A. and B. to C. *Lysaght v. Bryant*, 9 C. B. 46.

15. *Action by holder against drawer.*—*Notice of dishonour.*—The holder of a bill of exchange may, in an action against the drawer, avail himself of a notice of dishonour given in due time by any party to the bill, who, at the time of giving such notice, was under liability to him. *Lysaght v. Bryant*, 9 C. B. 46.

16. *Satisfaction by drawer or indorser and indorsee, not discharge acceptors' liability to indorsee.*—Satisfaction of a bill as between a drawer or indorser and an indorsee, whether before or after the bill became due, does not necessarily enure as a satisfaction on behalf of the acceptor, or operate to discharge him from liability to the indorsee. *Jones v. Broadhurst*, 9 C. B. 173.

Cases cited in the judgment: *Bacon v. Searles*, 1 H. Blac. 88; *Beck v. Robley*, 1 H. Blac. 89, n.; *Bayley on Bills*, 125; *Pursord v. Peek*, 9 M. & W. 196; *Johnson v. Kennion*, 2 Wils. 262; *Callow v. Lawrence*, 3 M. & Sel. 95; *Hubbard v. Jackson*, 1 M. & P. 11; 4 Bingh. 390; 3 Carr. & P. 134; *Pierson v. Dunlop*, 2 Cowp. 571; *Walwyn v. St. Quintin*, 1 B. & P. 571; *Reynolds v. Blackburn*, 7 A. & E. 161; 2 N. & P. 137; *Sard v. Rhodes*, 1 M. & W. 153; *Tyrwh. & Gr.* 298; 4 Dowl. P. C. 743; 1 Gale, 376; *Clayton's case*, 1 Meriv. 572, 604; *Field v. Carr*, 5 Bing. 13; 2 M. & P. 46; *Thomas v. Fenton*, 5 D. & L. 28; *Hemming v. Brook*, Carr. & Marsh. 57; *Pownall v. Ferrand*, 6 B. & C. 439; 9 D. & R. 603; *Lane v. Ridley*, 10 Q. B. 479; *Pascoe v. Vyvyan*, 1 Dowl.

N. S. 939; *Raid v. Farnival*, 1 C. & M. 528; *Experte De Testat*, in re Corson, 1 Rose, 10; *Grymes v. Blofield*, Cro. Eliz. 541; *Hooper's case*, 2 Leonard, 110; *Edgcombe v. Rodd*, 5 East, 294; *Thurman v. Wild*, 11 A. & E. 453; 3 P. & D. 289.

17. *Plea of delivery of goods in discharge by drawer to indorsees.*—*Action by indorsees against acceptor.*—To a count on a bill of exchange for 49l., by indorsees against acceptor, the latter pleaded, that, after the indorsement, and before the commencement of the action, the drawer delivered to the plaintiffs, and the plaintiffs accepted, goods of the value of 50l., in satisfaction and discharge of the bill, and of all damages and causes of action in respect thereof; and that the plaintiffs, from the time of the said satisfaction of the bill, had always held the same against the will and consent of the drawer, and so still held the same; and that the plaintiffs had commenced the action, and prosecuted the same, against, and in opposition to, the will and consent of the drawer.

*Held*, after verdict for the defendant, that the plea was no bar to the plaintiffs' right to recover against the defendant on the bill. *Jones v. Broadhurst*, 9 C. B. 173.

18. *Bill accepted by manager of mining company without authority of co-partners.*—A bill addressed to "The Alty Crib Mining Company," and accepted by the defendant, as follows:—"Per proc. The Alty Crib Mining Company, W. T. Van U., London, Manager." It was proved that four persons, one of whom was the defendant, had agreed to work a mine, under the name of The Alty Crib Mining Company, and had for some time worked it accordingly; and that the bill in question had been accepted by the defendant without the authority of his co-partners: *Held*, that the defendant was liable upon the bill, as acceptor. *Owen v. Van Uster*, 10 C. B. 318.

19. *Addressed to firm and accepted by one.*—*Held*, that one who individually accepts a bill addressed to a firm of which he is a member, is individually liable thereon. *Owen v. Van Uster*, 10 C. B. 318.

20. *Payment supra protest for honour of indorser.*—*Evidence.*—Where a foreign bill is paid *supra protest*, for the honour of an indorser, the bill must be protested for non-payment before payment for honour is made; but the formal instrument of protest may be drawn up, or extended, at any time afterwards, even after the commencement of an action by the person so paying, against the indorser for whose honour payment was made.

Where, therefore, a bill had been duly paid *supra protest*, and a formal protest transmitted abroad to the party for whose honour the payment was made,—*quare*, whether secondary evidence of the protest was admissible?

But, *held*, that a formal protest extended by the notary from his book, after the commencement of the action, but bearing date the day of actual protest, was *primary* evidence of the payment *supra protest*. *Geralopulo v. Wieler*, 10 C. B. 690.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 22, 1853.  
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## COMMENTS ON THE NEW COMMON LAW RULES.

UPON the earliest opportunity, and by resorting to a double Number, we were enabled last Saturday, to put our readers in possession of the Code of Rules, sanctioned by the Judges, for regulating and assimilating the practice of the Courts of Queen's Bench, Common Pleas, and Exchequer, in civil actions.

As no interval was allowed to elapse between the promulgation of the Rules and the commencement of their operation, the importance of placing them, without delay, in the hands of every Common Law practitioner, was manifest. No attorney who had business depending in any of the three Courts, could rest securely until he had ascertained how far his individual duties and responsibilities were affected by ordinances in force at the moment they were announced, and the scope and tenour of which could only be matter of vague conjecture; and to a practitioner thus circumstanced, no commentary—however precise and elaborate—would have been an adequate substitute for the Rules themselves. To such practitioners, as well as to others who have perused the new Rules without any reference to their operation in particular cases, some observations upon their general character and tendency may not be deemed unacceptable; whilst to those who have not yet found time for the perusal, a notice of the most striking changes effected in practice can scarcely fail to be satisfactory.

As already intimated (page 186), only a small proportion of the Rules now issued can be said to be altogether *new*. Many of those Rules are simple re-enactments; others are framed with a view of rendering the practice uniform in particular instances

in which the practice of one Court differed from the other two; and, in several instances, that which was already established as the practice is now, for the first time, embodied in the authoritative form of a General Rule of all the Courts. The Rules absolutely *new*, are, for the most part, founded upon the alterations of procedure effected by the operations of the Act 15 & 16 Vict. c. 76, but, in some instances, the framers of the present Rules, acting it may be supposed upon the dictates of experience, and with a view to the improvement of the administration of justice, have enjoined the observance of fresh or altered regulations independent of any statutory provisions. We select a few of the most striking instances falling under both divisions.

Amongst the earliest examples of a new Rule, wholly founded upon the provisions of the Common Law Procedure Act, 1852, we may refer to the Rule relating to the *joinder of parties* (R. 6), which directs that—

“Whenever a plaintiff shall amend the writ after notice by the defendant, or a plea in abatement of a nonjoinder by virtue of the Common Law Procedure Act, 1852, sect. 36, he shall file a consent in writing of the party or parties whose name or names, are to be added, together with an affidavit of the handwriting, and give notice thereof to the defendants, unless the filing of such consent be dispensed with by order of the Court or a Judge.”

To understand the applicability and operation of this Rule, we must refer exclusively to the provisions of the Statute upon which it is founded. As our readers will recollect, sect. 34 of the Common Law Procedure Act provides, that the nonjoinder of plaintiffs may be amended *before trial*, by adding the names of those who ought to be joined, if no injustice will be done by such

amendment, and that the persons to be added consent to be so joined. The next sect. (35) enacts, that the nonjoinder of plaintiffs may be amended *at the trial*, upon the like consent, if the defendant does not, at or before the time of pleading, give notice that he objects to such nonjoinder, and that it appears to the Judge that the nonjoinder was not for the purpose of obtaining an undue advantage, and that its amendment will not work injustice. Then comes sect. 36, referred to in the Rule, which provides, that "In case *such notice* be given, or plea in abatement of nonjoinder pleaded by defendant, the plaintiff may, without any order, amend the writ and other proceedings, before plea, by adding the persons named in such notice, or plea, and proceed in the action without any further appearance on payment of the costs of amendment only, and in such case defendant shall be at liberty to plead *de novo*." Here the Rule carries out the object of the Act, and supplies what it omitted to provide. When the defendant objects by notice or plea, that the proper parties are not joined as plaintiffs, and the defendant defers to that objection and adds the names of the plaintiffs so omitted, he is required by the Rule to file a consent of the parties to be added, verifying their signatures, and to give notice to the defendant that he has filed such consent. By this proceeding, the defendant, who has a well-founded objection to the nonjoinder of parties, obtains all that he could effect by a successful plea in abatement, but without the delay and expense such a plea, if maintained, throws upon the plaintiff.

#### TIME FOR ISSUING EXECUTION.

A very remarkable omission in the Common Law Procedure Act, which has already occasioned some doubt and inconvenience, is supplied by Rule 57, which declares, that—

"When a plaintiff or defendant has obtained a verdict in *Term*, or in case a plaintiff has been nonsuited in or out of *Term*, judgment may be signed and execution issued thereon in 14 days, unless the Judge who tries the cause, or some other Judge, or the Court, shall order execution to issue at an earlier or later period, with or without terms."

It will be recollected, that, before the passing of the Common Law Procedure Act, a party obtaining a verdict or nonsuit was at liberty to sign judgment and issue execution on the day after the appearance day of the return of *distringas juratores*, or *habeas corpora*, and as the *distringas* or *habeas corpora* might be made returnable

on any day in *Term* after trial, when the trial took place at the Sittings in *Term*, the successful party was generally entitled at any time, after the fourth day, to sign judgment, tax his costs, and issue execution. The jury process is abolished altogether by the recent Act (s. 104), and sect. 120 provided, "that a plaintiff or defendant having obtained a verdict in a cause tried *out of Term*, shall be entitled to issue *execution* in 14 days, unless the Judge who tries the cause, or some other Judge, or the Court, shall order execution to issue at an earlier or later period, with or without terms."

Express provision is thus made for the time of issuing execution, upon a verdict obtained in a cause tried *out of Term*, but no provision was made in the Act for the issue of execution on a verdict obtained in *Term*, or a nonsuit in or out of *term*; whilst the foundation upon which the old practice rested—the return of the jury process—was completely demolished. To supply this palpable and very serious defect, the Judges who sat at Nisi Prius during Michaelmas *Term*, deemed it expedient to make an order in every case tried, authorising the successful party to sign judgment and issue execution at the end of a stipulated period. This necessity will in future be prevented by the General Rule above cited, which is intended to govern the practice in ordinary cases. The change effected by the combined operation of the Statute and the new Rule, may be thus stated. Under the old practice, a successful party trying in *Term* was generally entitled to sign judgment and issue execution on the fifth day after the trial, whereas he is not now entitled to sign judgment until 14 days after the verdict or nonsuit. On the other hand, under the old practice, the party successful in a trial at the Sitting after *Term*, was not ordinarily entitled to his judgment and execution until the fifth day of the following *Term*, whereas he will now be entitled to issue his execution in 14 days after trial, unless a Judge or the Court orders it to be issued at a later period. It will be advisable, therefore, to apply for a stay of execution in cases tried out of *Term*, whenever it is intended to apply for a rule for a new trial. It may be observed, that both the Statute and the new Rule refer only to "*causes*" tried in or out of *Term*, and not to causes tried upon Circuit; but it may be presumed that causes tried upon Circuit, will be considered to fall within the category of those tried "*out of Term*," and will be subject to similar regulations, as to the time for signing judgment and issuing execution.

## PRACTICE BY SUMMONS AND ORDER.

Amongst the changes in practice introduced by the new Rules, suggested by experience, and which are wholly irrespective of statutory enactments, we may notice the alteration made in the Chamber practice of the Judges, *dispensing with the service of a second summons* when the party summoned has failed to attend upon the return of the first. Formerly, when the party summoned neglected to attend, the order must in general be preceded by three summonses and an affidavit of attendance thereon.<sup>1</sup> According to the modern practice, however, when default was made, it was only deemed necessary to serve a second summons, but, in general, to obtain a Judge's order by default, it was indispensibly necessary that there should be an affidavit of the service of two summonses and of the attendance of the party issuing such summonses at the appointed time and place.<sup>2</sup> According to Rule No. 153 of the series now issued:—

"It shall not be necessary to issue more than one summons for attendance before the Judge, upon the same matter, and the party taking out such summons shall be entitled to an order on the return thereof, unless cause is shown to the contrary."

By the new practice, the expense of issuing and serving a second summons, as well as the delay occasioned by waiting its return will be spared, whilst, on the other hand, the practitioner is deprived of the option, often exercised with great convenience, of choosing between attending one day or the next.

## SERVICE OF NOTICES, PLEADINGS, &amp;c.

It would appear, from one of the new Rules, that the influence of "the early closing movement" had extended to the Legal Profession. A rule of Michaelmas Term (41 Geo. 3) directed, that no rules, orders, or notices should be served later 10 o'clock at night, and that a service after that hour should be void. By R. Hil., 2 Wm. 4, service of rules, orders, and notices, if made before *nine at night*, were to be deemed good, but not if made after that hour, and by the Rules now under consideration (R. 164), it is declared that—

"Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be made *before seven o'clock P.M.* If made after that hour, the service shall be deemed as made *on the following day.*"

We have some reason to believe, that this alteration will be received with satisfaction by the Profession. The power to deliver papers until the advanced hour of 9 o'clock was sometimes vexatiously used, and the latter branch of the Rule, which provides that service after the prescribed hour shall not be void, but "shall be deemed as made on the following day," is a sensible arrangement which can scarcely fail to obtain general concurrence.

## PROCEEDINGS BY CONSENT.

The Rules of Hilary Term, 1853, recognise a principle which, it is submitted, may be advantageously extended,—namely, that the formal authority of the Court may be dispensed with where the attorneys of the litigant parties are agreed upon any proceeding in a cause, and signify their acquiescence by a written consent. For example, it is provided by Rule 8 that—

"The defendant shall not be at liberty to waive his plea, or enter a *relicta verificationes* after demurrer, without leave of the Court or a Judge, *unless by consent of the plaintiff or his attorney.*"

So we find, in Rules 36 and 37, that—

"*Notice of trial or inquiry may be continued to any sitting in or after Term, on giving a notice of continuance four days before the time mentioned in the notice of trial or inquiry, unless short notice of trial has been given, in which case two days' previous notice shall be sufficient, unless otherwise ordered by the Court, or a Judge, or by consent.*

"*Continuance of notice of inquiry shall be given four days before the day of inquiry mentioned in the notice, unless short notice of inquiry has been given, and then two days before such day, unless otherwise ordered by the Court, or a Judge, or by consent.*"

## CHANGE OF VENUE.

The most remarkable instance, however, in which the consent of parties is made equivalent to the order of the Court or a Judge, is, in the Rule relating to *change of venue*. As all our readers are aware, in transitory actions, the venue might be laid, in the first instance, in any county at the option of the plaintiff, subject, however to being changed to the county in which the cause of action really arose upon what was called "the common affidavit;" and subject again, to be brought back, upon an undertaking of the plaintiff to give material evidence in the county in which the venue was originally laid.<sup>3</sup> The plaintiff's right to lay the venue in any county he thinks

<sup>1</sup> See Tidd's Practice, 9th edit., p. 511.

<sup>2</sup> Bagley's New Prac., pp. 292, 293.

<sup>3</sup> 1 Rule H., 2 Wm. 4, s. 103.



proper, is not now interfered with, but it is expressly provided by Rule 18, that

"No venue shall be changed without a special order of the Court or a Judge, unless by consent of parties."

In future, therefore, the venue, whether local or transitory, can only be changed upon special grounds, as by satisfying the Court or a Judge that injustice may be done, or great additional expense incurred, by the trial of the cause in the county in which the venue is laid. It is contemplated, however, that the parties may sometimes be able to agree upon the county in which the cause should be tried, and upon such agreement, the venue may be changed to the county determined upon by consent.

#### ACTIONS BY PAUPERS.

We have only space to direct the attention of our readers to the very salutary check put upon the multiplication of actions by pauper plaintiffs, by the Rule numbered 121. The privilege humanely allowed to paupers, to bring actions without any liability for costs has, no doubt, in some late instances been grossly abused. The Rule referred to provides that :—

"No person shall be admitted to sue in *formâ pauperis*, unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party or his attorney, that the same case contains a full and true statement of all the material facts, to the best of his knowledge and belief, shall be produced before the Court, or Judge, to whom application may be made; and no fees shall be payable by a pauper to his counsel and attorney, nor at the offices of the Masters or Associates, or at the Judge's Chambers, or elsewhere, by reason of a verdict being found for such pauper exceeding 5*l.*"

The latter branch of this Rule does not appear to be very clearly expressed; if by the words "no fees shall be payable by a pauper to his counsel and attorney," &c., although he obtains a verdict exceeding 5*l.*, it is meant that the pauper's attorney is not entitled to demand *any* costs from the adverse party even when a pauper plaintiff is successful, the effect will be not merely to limit, but to abolish, pauper actions, and it would have been better to repeal the Statute 23 Hen. 8, c. 15, upon which the pauper privilege rests. The terms of the Rule, however, admit of a narrower construction, and one which it is probable it may yet receive. It seems that where a pauper recovered less than 5*l.*, although he was entitled to have his costs taxed in the usual way, the officers of the Courts refused to

take their fees. Under the new Rule, even when a pauper recovers more than 5*l.*, he is entitled to consider the services of his counsel and attorney as gratuitous, but the latter is not prohibited from recovering his costs from the opposite party. The question, we apprehend, which the Courts will have to decide in such a case is, whether the attorney for a successful pauper plaintiff shall be entitled to costs taxed in the ordinary way, or only allowed the costs out of pocket?

We shall resume the further consideration of the new Rules upon an early occasion.

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#### REMUNERATION OF SOLICITORS.

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THE old rules by which the remuneration of solicitors was estimated,—1st, by the *length* of the instruments prepared, whether deeds, pleadings, briefs, or other papers; and 2nd, by the *time* occupied in formal and technical proceedings,—appear now to be inapplicable to the altered state of professional business. The various new Statutes and Rules and Orders of the Courts of Law and Equity have, in a great degree, either wholly abolished or largely diminished the emoluments which were previously derived by solicitors under the old system.

It is evident that these changes must be followed by new regulations in the taxation of costs. The solicitor, according to the fixed scale of the old clerks in Court, was not allowed for a multitude of services which he rendered in the progress of a cause, but was supposed to be compensated by allowances on the length of pleadings, the copies of proceedings, and other emoluments of which the new system has almost wholly deprived him. It is manifestly just that he should be fairly and properly paid for all the actual labour and skill bestowed in his clients' affairs.

We are fully convinced that the best interests of the public, in the due administration of justice, are deeply involved in the speedy and right adjustment of this matter. For if fair and proper (not to say liberal), allowances are withheld from the solicitor in the conduct of actions and suits, the class of men now practising in the Superior Courts, and possessing large capital, will gradually withdraw and give place to a needy and inferior order of persons. A certain number of influential practitioners, connected with noble and wealthy families, will confine

their practice to the management of property, and leave the conduct of actions and suits to those who may be content with diminished remuneration, but whose means will not enable them to conduct suits requiring large outlay and the responsibilities of which they will rarely be able to satisfy.

In this state of things, and of the difficulties which surround the important changes which have taken place, we have received some suggestions which deserve the serious consideration of that great branch of the Profession, whose interests it is our duty to advocate, and for the present we submit to our readers the following points:—

1. In that large class of legal business which relates to the sale and purchase of property, an *ad valorem* scale of allowance might be established, graduated according to the amount: otherwise in small transactions the allowance would be inadequate. This principle of remuneration prevails to a certain extent in Scotland, and seems to be just, because it estimates responsibility as well as skill and labour.

2. There might be a per-centage allowed as part of the remuneration for conducting administration suits, which form a large part of what may be termed the *trust* business of the Court of Chancery.

3. A large discretionary power should be given to the Taxing Master, subject to appeal to a Judge at Chambers, or to the Court, in cases where great skill has been exercised, expense saved, and the termination of the action or suit expedited.

4. Interest should be allowed on the fees and disbursements paid in actions and suits, where the client is unable or fails to make advances for the outlay, and especially where the costs of the attorney remain unpaid upwards of a year.

5. The fees allowed in Lord Hardwicke's time, and increased by Lord Erskine, should be carefully revised. It is now 46 years since Lord Erskine and Sir William Grant did the practitioner the justice of making some increase in the old fees, and the progress of Law Reform since 1806, has certainly been greater than in the preceding 50 years. We trust, therefore, that the present Lord Chancellor and Master of the Rolls, with the Vice-Chancellors, will concur in a complete revision and amendment of the present scale of costs, and with the aid of the Taxing Masters and Solicitors, do justice alike to the suitor and the practitioner.

## LAW OF ATTORNEYS AND SOLICITORS.

### LIEN ON TRUST DEEDS.

THE Court of Chancery has jurisdiction on petition over deeds which have been delivered by executors to their solicitors, but will protect the lien of the solicitors on the fund arising from the property to which the deeds relate, where advances have been made and costs incurred on behalf of the parties beneficially interested.

In a recent case before the Lords Justices, Lord Justice *Knight Bruce* said,—"When a solicitor has received documents belonging to his client, a jurisdiction of a summary nature attaches, under which possession of them may be recovered. As they cannot be taken from him without doing justice, it follows that in this summary jurisdiction an investigation may be made into the grounds on which he holds them, and that provision must be made for satisfying his claim (if any). This has been the settled course of the Court for years. Suppose the solicitor of *C.*, a trustee, to receive documents belonging to the trust, knowing them to belong to the trust,—the solicitor incurs, in that transaction, an immediate liability to those for whom *C.* was a trustee, and, with that liability, a liability also, generally, to the same remedies, for the purpose of recovering possession of the deeds, as *C.* himself is liable to. That is the general rule, which, however, may be liable to exception under particular circumstances. Now, the first question here is, whether the solicitors ought to be taken to have received the documents with notice of the purpose for which their client held them. They were his solicitors, and have been so in this cause. They state that they received the documents as his solicitors, he being only a mortgagee, and for the purpose of this jurisdiction it ought, I think, to be inferred that they received the documents with notice of the nature of the title.

"That disposes of the question of the necessity of instituting another suit or claim. There is an ample fund in Court, and the parties are willing to submit to an order that a sufficient amount shall remain undisturbed and liable to make good the lien, if any, with a reference to the Master as to the quantum." An order therefore to that effect was made. *Francis v. Francis*, 2 De G. M'N. & G. 77.

## COLONIAL APPEALS.

## REGULATIONS OF THE JUDICIAL COMMITTEE.

At the Court at Windsor, the 27th day of November, 1852. Present, the Queen's most excellent Majesty in Council.

Whereas by an Act passed in the Session of Parliament, holden in the 7th and 8th years of her Majesty's reign, intitled "An Act for amending an Act passed in the 4th year of the reign of his late Majesty, intituled 'An Act for the better Administration of Justice in his Majesty's Privy Council, and to extend its Jurisdiction and Powers,'" it was amongst other things provided, that it should be competent for her Majesty, by an order or orders, to be from time to time for that purpose made, with the advice of her Privy Council, to provide for the admission of any appeal or appeals to her Majesty in Council, from any judgments, sentences, decrees, or orders of any Court of Justice within any British colony or possession abroad, although such Court shall not be a Court of Errors or a Court of Appeal within such colony or possession; and it shall also be competent to her Majesty, by any such order or orders as aforesaid, to make all such provisions as to her Majesty in Council shall seem meet for the instituting and prosecuting any such appeals, and for carrying into effect any such decisions or sentences as her Majesty in Council shall pronounce thereon: Provided always, that it shall be competent to her Majesty in Council to revoke, alter, and amend any such order or orders as aforesaid, as to her Majesty in Council shall seem meet:

And whereas it is expedient that provision should be made in pursuance of the said recited enactment to enable parties to appeal in civil causes from the decisions of the Supreme Court of the province of New Brunswick to her Majesty in Council, the same not being a Court of Error or of Appeal:

It is hereby ordered by the Queen's most excellent Majesty, by and with the advice of her Privy Council, that any person or persons may appeal to her Majesty, her heirs and successors, in her or their Privy Council, from any final judgment decree, order, or sentence of the said Supreme Court of the province of New Brunswick, as a Court of Civil Judicature, or as a Court of Revenue or of Escheat, in such manner, within such time, and under and subject to such rules, regulations, and limitations as are hereinafter mentioned; that is to say, in case any such judgment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of 300*l.* sterling, or in case such judgment, decree, order, or sentence shall involve directly or indirectly, any claim, demand, or question to or respecting property in any civil right amounting to or of the value of 300*l.* sterling, or in case the matter in question relates to the taking or demanding

any duty payable to her Majesty, her heirs and successors, or to any fee of office, or other such like matter or things, whereby the rights of her Majesty, her heirs or successors may be bound, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence may, within 14 days next after the same shall have been pronounced, made, or given, apply to the said Court by motion for leave to appeal therefrom to her Majesty, her heirs and successors, in her or their Privy Council, or if the said Court be not sitting, then by petition to either of the Judges of the said Court. And in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any such sum of money or perform any duty, the said Court or such Judge as aforesaid, shall and is hereby empowered either to direct that the judgment, decree, order, or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said Court or such Judge as aforesaid may appear to be most consistent with real and substantial justice. And in case the said Court, or such Judge as aforesaid, shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons in whose favour the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Court, or such Judge as aforesaid, for the due performance of such judgment or order as her Majesty, her heirs and successors, shall think fit to make upon such appeal. And that in all cases, security shall also be given by the party or parties appellant in a bond or mortgage or personal recognizance, not exceeding the value of 500*l.* sterling, for the prosecution of the appeal and for the payment of all such costs as may be awarded by her Majesty, her heirs and successors, or by the Judicial Committee of her Majesty's Privy Council, to the party or parties respondent; and that such security as aforesaid for the prosecution of the appeal, and for the payment of all such costs as may be awarded, be completed within 28 days from the date of the motion or petition for leave to appeal; and the party or parties appellant shall then, and not otherwise, be at liberty to prefer and prosecute his, her, or their appeal to her Majesty, her heirs and successors, in her or their Privy Council, in such manner and under such rules as are or may be observed in appeals made to her Majesty from her Majesty's colonies and plantations abroad.

And it is further ordered, that it shall be lawful for the said Court, at its discretion, on the motion, or if the said Court be not sitting, then for either of the Judges of the said Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said Court, to grant permission to such party to appeal against the same to her Majesty, her heirs and successors, in her or their Privy Council, subject to the same rules, regulations, and limitations, as are herein expressed

respecting appeals from final judgments, decrees, orders, and sentences.

Provided also, that if in any action, suit, or other proceeding, it shall so happen that no final judgment, decree, order, or sentence can be duly given in consequence of a disagreement of opinion between the Judges of the said Court, then and in such case the final judgment, decree, order, or sentence may be entered, *pro forma*, on the petition of any of the parties to the action, suit, or other proceeding, according to the opinion of the Chief Justice, or in his absence, of the Senior Puisane Judge of the said Court. Provided, that such judgment, decree, order, or sentence shall be deemed a judgment, decree, order, or sentence of the Court for the purpose of an appeal against the same, but not for any other purpose.

Provided always, and it is hereby ordered, that nothing herein contained doth or shall extend or be construed to extend to take away or abridge the undoubted right and authority of her Majesty, her heirs and successors, upon the humble petition of any person or persons aggrieved by any judgment or determination of either of the said Courts, at any time to admit his, her, or their appeal therefrom, upon such terms, and upon such securities, limitations, restrictions and regulations, as her Majesty, or her heirs or successors, shall think fit, and to reverse, correct, or vary such judgment or determination as to her Majesty, her heirs or successors, shall seem meet.

And it is further ordered, that in all cases of appeal made from any judgment, order, sentence, or decree of the said Court to her Majesty, her heirs or successors, in her or their Privy Council, such Court shall certify and transmit to her Majesty, her heirs and successors, in her or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders, had or made, in such cases appealed against, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said Court. And that the said Court shall also certify and transmit to her Majesty, her heirs and successors, in her or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And it is further directed and ordained, that the said Court shall, in all cases of appeal to her Majesty, her heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as her Majesty, her heirs or successors, in her or their Privy Council shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said Court, should or might have been executed.

And the Right Honourable Sir John Pakington, Bart., one of her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

C. C. GREVILLE.

## COMMON LAW RULE APPOINTING EXAMINERS FOR 1853.

Hilary Term, 1853.

It is ordered, that the several Masters for the time being of the Courts of Queen's Bench, Common Pleas, and Exchequer, respectively, together with Benjamin Austen, Keith Barnes, Edward Savage Bailey, Thomas Clarke, William Loxham Farrer, John Swarbreck Gregory, Germain Lavie, Joseph Maynard, William Henry Palmer, Edward Rowland Pickering, Charles Ranken, William Sharpe, John James Joseph Sudlow, Augustus Warren, William Williams, and John Young, gentlemen, attorneys at law, be and the same are hereby appointed Examiners for the present year, to examine all such persons as shall desire to be admitted attorneys of all or either of the said Courts, and that any five of the said Examiners (one of them being one of the said Masters) shall be competent to conduct the said examination, in pursuance of and subject to the provisions of the Rule of all the Courts made in this behalf in Easter Term, 1846.

CAMPBELL,  
JOHN JERVIS,  
FRED. POLLOCK.

## BIRMINGHAM LAW STUDENTS' DEBATING SOCIETY,

ESTABLISHED, 1848.

Patrons.

M. D. Hill, Esq., Q. C., Recorder of Birmingham.

John Balguy, Esq., Q. C., Commissioner of the Court of Bankruptcy.

E. R. Daniel, Esq., Q. C., Commissioner of the Court of Bankruptcy.

Leigh Trafford, Esq., Judge of the County Court.

At the Annual General Meeting, held on the 5th January inst., at the Philosophical Institution, Cannon Street. C. T. Saunders, Esq., in the Chair.

The report having been read by the secretary, from which it appeared

That the members of the Society had been engaged in the study of "Chitty on Contracts," "Williams on Personal Property," and the current Examination Questions, and in the discussion of Moot Points of a jurisprudential and legal character.

That the ordinary fortnightly meetings had been held without one omission, and that the average attendance of members had much increased.

That the Society at present consists of 111 honorary members and 27 ordinary members.

That the library had been augmented during the past year by the purchase of Petersdorff's Abridgment of the Common Law Reports, 15 vols., and seven text books upon various branches of the law, and that several other works decided upon would be placed in the library as soon as published.

It was moved by *Thomas Martineau, Esq.*, seconded by *Mr. C. E. Mathews*, and

*Resolved*,—That the report of the proceedings of the past year now presented by the Committee be received and adopted.

It was moved by *Mr. M. A. Fitter*, seconded by *Mr. Francis Sanders*, and

*Resolved unanimously*,—That the best thanks of this meeting be presented to *Arthur Ryland, Esq.*, for his kind exertions to procure the use of the Law Library for the Society's meetings.

In pursuance of a resolution adopted at a Special Meeting of the Society, held on the 8th

December last, the chairman then presented to *Mr. M. A. Fitter* "Townsend's State Trials," as an acknowledgment of the important services he has rendered to the Society during his long connexion with it.

The following officers were elected for the ensuing year :—

#### *Committee.*

*C. T. Saunders, Esq.*, Honorary Member.  
*Mr. M. A. Fitter*, *Mr. G. J. Johnson*, *Mr. Francis Sanders*, and *Mr. John Neve*, Ordinary Members.

Honorary Secretary, *Mr. G. J. Johnson*, 64, Little Charles Street.

Honorary Corresponding Secretary, *Mr. Francis Sanders*, 30, Waterloo Street.

Honorary Librarian, *Mr. J. Neve*, 5, Old Square.

### ATTORNEYS TO BE ADMITTED.

*Easter Term, 1853.*

[Concluded from page 194, ante.]

#### *Queen's Bench.*

##### *Clerks' Names and Residences.*

Edwin, William, Bayldon-house, Walworth .  
Evans, Asa Johnes, 18, Upper Marylebone-street,  
Portland-place; and Kilgerran .  
Evans, Edward, 7, King's-bench-walk, Temple .  
Fewster, John Reed, 10, Gordon-street, Islington;  
Alfred-street; and Durham .  
Fitter, Matthew Alexander, Edgbaston, near Bir-  
mingham .  
Froom, Charles Poole, 6, Oxford-sq., Hyde-park .  
Garrod, John James, 3, Belgrave-street, South  
Pimlico; and Wells .  
Giraud, Francis Fred., 23, Calthorpe-st., Gray's-  
inn-road; and Ashford .  
Glubb, Albert Chas. Lyne, 10, Essex-st., Strand;  
Chadwell-street; and Liskeard .  
Goodman, William Benjamin, King's Lynn .  
Greenhill, Charles Pope, 38, Woburn-pl., Russell-  
square; and Lewes .  
Haddelsey, George Robert Foster, Caistor; and  
Kingston-upon-Hull .  
Hannay, William, 8, Tieborne-st., Edgware-road;  
Goulden-terrace; and Nottingham .  
Hargreaves, Joseph, Bradford .  
Haye, James, 20, Chadwell-street, Myddleton-sq.;  
and Launceston .  
Heathcote, Edward, 9, Albion-place, Hyde-park .  
Hodgson, James Leyland, Pendleton, near Man-  
chester .  
Hyde, Jas. Trevelyan, 1, Highbate-rise, Middlesex .  
Jackson, Samuel, jun., York .  
James, Richard, 10, Warwick-court, Holborn;  
and Aberystwith .  
Jebb, John Joshua, 17, Chester-terrace, Eaton-sq.;  
and Boston .  
Jennins, Charles, 26, Bryanstone-street, Portman-  
sq.; and Bath .  
Jessop, Richard, 13, North-crescent, Bedford-sq.;  
and Huddersfield .  
Johnson, Edward, jun., 5, Goulden-terrace, Barna-  
bury-road; and Saffron Walden .  
Jones, Josiah, Worcester .

##### *To whom Articled, Assigned, &c.*

*M. Cooper*, Southwark; *G. Ade*, High-street .  
*J. Smith*, Cardigan .  
*F. Boydell*, Chester .  
*R. J. Shafto*, Durham .  
*W. S. Harding*, Birmingham .  
*W. W. Aldridge*, Gray's-inn .  
*E. Davies*, Wells .  
*R. Furley*, Ashford; *S. C. Venour*, Gray's-inn-sq.  
*P. Glubb*, Liskeard .  
*C. Rollings* (since dead), Birmingham .  
*J. E. Fullagar*, Lewes .  
*C. R. Haddelsey*, Caistor .  
*W. Enfield*, Nottingham .  
*J. Wood*, Bradford, Yorkshire .  
*N. H. P. Lawrence*, and *S. R. Pattison*, both of  
Launceston .  
*S. Bellamy*, Gainsborough; *C. Bell*, Bedford-row .  
*T. Dodge*, Liverpool; and *A. L. Hardman*, Man-  
chester .  
*C. Hyde*, Ely-place .  
*E. R. Anderson*, York .  
*W. H. Thomas*, Aberystwith .  
*S. H. Jebb*, Boston .  
*P. H. Watts*, Bath .  
*W. Jacomb*, Huddersfield .  
*G. S. Burdett*, Saffron Walden; *N. C. Milne*,  
Temple .  
*J. Jones*, Worcester .

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

Jones, Thomas, 60, Stanhope-street, Hampstead-rd.	G. Wray, Percy-street; T. Robinson, South-sq.; G. Wray, Percy-street
Kelsall, Frederick Henry, 14, Upper Porchester-street, Paddington; and Chester	J. Robinson, Liverpool
Kendall, Edmund, 17, Lower Calthorpe-street, and Upper-Bedford-place	R. H. Rolls, Banbury; E. W. Field, Bedford-row; W. Kendall, Bourton
Kent, Alfred Clement, 22, Everett-street, Russell-square; and Thanet-place, Liverpool	E. J. Kent, Liverpool; W. K. Tyrer, Liverpool
Leake, John, York	L. Thompson, York
Leigh, Arthur William, Collumpton, Devon	F. Leigh, Collumpton; R. R. Crosse, Collumpton
Lott, Thomas Edwd., 10, Carlton-villas, Camden-road, Holloway	Thomas Lott, Bow Lane, Cheapside
Lovett, Philip William, Chertsey	D. Grazebrook, Chertsey; H. G. Grazebrook, Chertsey
Lowe, Francis, 12, Chapel-street, Bedford-row; and Nottingham	J. Wadsworth, Nottingham.
Lucas, Thos. Edward, 9, Taunton-place, Regent's-park	J. Ingram, Lincoln's-inn-fields
Malton, William Davies, 36, Wimpole-street, Cavendish-square; and Carey-street	W. F. Baynes, Carey-street
Markby, Henry, 63, Charlewood-street, Belgrave-road	Messrs. Crabtree and Cross, Halesworth
Marett, Edmund Rowe, 1, Staple-inn	W. Clarke, Coleman-street
Maclure, Edward Wade, Sandbach	E. Lewis, Manchester; A. Maclure, Nantwich; and J. Remer, Sandbach
Miller, Mark Benjamin, 18, Chalcott-villas, Haverstock-hill	M. B. Miller, Chifford's-inn
Moss, Alfred, 6, Clifton-place, Camberwell	J. Gurney, Nicholas-lane; J. H. Torr, Clifford's-inn
Murray, Andrew, 23, Davies-street, Berkeley-sq.	H. S. Lawford, Throgmorton-street
Nairn, Henry Pearson, Twickenham	E. Watts, Hythe; and J. Kingsford, Essex-street
Nash, Alfred Dormor, 14, Great Coram-street, Russell-square	A. Mayhew, Carey-street,
Nater, Henry Trewbitt, 17, King Edward-street, Islington; and Nassau-st., Middlesex	G. W. Wright, Sunderland; and J. Turner, Aldermanbury
Neate, Albert, 40, Duke-st., Manchester-sq.	J. Neate, Orchard-street
Nickolls, William, 39, Keppell-street, Russell-square; and Chew Magna	C. Mullins, Chew Magna
Noble, John Gould, 7, Claremont-terrace, Pentonville	W. G. Bolton, Austin Friars.
Pain, John David, Newport, Christ Church, Monmouth	T. M. Llewellyn, Newport
Payne, John Brown, Manchester	A. Oliver, Manchester
Perrin, Edward Hayward, 2, Dorset-cottages, Dalston; and Temple Cloud, near Bristol	J. R. Mogg, Temple Cloud, near Bristol
Pollock, Alfred Atkinson, Frederick's-place, Old Jewry	P. R. Alderson, Norfolk-street; P. J. T. Pearse; and P. J. T. Pearse, jun., Frederick's-place
Powles, Kenneth, 50, Upper Albany-street	A. Lacey, Liverpool
Price, Wm. Greene, 28, Bedford-sq.; Brompton-square; Woburn-pl.; and Ben-hall, near Ross	T. G. Norcutt, Gray's-inn-square; and J. F. Isaacson, Norfolk-street
Prudence, Stanley George, Clapham-common	G. F. P. Sutton, Basinghall-street
Ranson, Thomas Wilson, 14, Featherstone-bldgs.; and Sunderland	G. S. Ranson, Sunderland
Reade, George William, 4, Ordnance-road, St. John's Wood	G. Reade, Congleton; G. F. Hudson, Bucklersbury
Rhodes, Abraham, 41, Granville-square	S. W. Johnson, Gray's-inn-square
Rhodes, Arthur Charles, Denmark-hill	C. H. Rhodes, Chaucery-lane
Richardson, Robert, 10, Charlewood-place, Pimlico	M. Pearson, and T. Hawdon, Selby
Richardson, William Rodgers, 27, Frederick-st., Gray's-inn; and Hatton Garden	F. Short, Bristol
Robson, John, jun., 7, Clarence-terrace, Regent's-park	J. Robson, Castle-street, Leicester-square
Rudge, Edmund, jun., 10, Chapetow-pl., Kensington; and Tewkesbury	J. Thomas, Tewkesbury
Scott, George Wm., 2, Great Dean's-yard, Westminster	J. Scott, Lincoln's-inn-fields
Senior, Frederick Bernard, 3, Warwick-square, Kensington; and Kew	W. Chapman, Richmond, Surrey
Shelton, Richard, 12, Bryanstone-street, Portman-square; and Birmingham	C. Ingleby, Birmingham
Sheppard, Augustus Frederick, Bellfield-house, Parson's-green, Fulham	W. Parsons, Charing-cross; and J. King, North-Buildings
Simpson, James Tennant, 5, Montague-place, Russell-square	James A. Simpson, Moorgate-street

*Clerks' Names and Residences.**To whom Articled, Assigned, &c.*

Smale, Arthur William, 2, Lincoln's-Inn-Fields	Charles Smale, Bideford
Snowball, George, 2, Henrietta-street, Brunswick-square; and Sunderland	G. W. Wright, Sunderland
Sparrow, William D. Lloyd, 6, Waverley-place, St. John's-wood; and Derby	J. B. Simpson, Derby
Steward, Thomas, 15, Everett-street, Russell-sq.; and Ipswich	C. Steward, Ipswich
Stiffe, Francis William Everitt, 8, Clement's-inn; Percy-circus; and Bristol	A. Cox, Bristol
Stringer, Charles, West Bromwich	G. Hinchliffe, West Bromwich; G. F. Hinchliffe, ditto
Talbot, William Henry, 40, Stanhope-st., Hampstead-road; and Tenterden	J. Munn, Tenterden
Thomas, Richard Aubrey, 14, Featherstone-bldgs.; Surrey-street; Hall-street; Greenhall	George Thomas, jun., Carmarthen
Thurgood, Henry John, Battle, Sussex	M. Lane, Braintree, Essex; Robert Young, Battle
Tindell, William Frederick, 7, Rockingham-row, East; and New Kent-road	M. Cooper, High-street; G. Ade, ditto
Walter, Charles, Kingston-upon-Thames	J. Johnston, Chancery-lane; W. Walter, sen., Kingston
Walter, James, Kingston-upon-Thames	W. Walter, Kingston; and H. Chester, Newington
Weatherall, Frederic, 2, St. Mary's-place, Highbury	E. Weatherall, King's-bench-walk
Whitefield, John Charles, Bristol	W. Gresham, Castle-st., Holborn; W. B. Cooper, Hatton-garden; G. W. Whitaker, Heathcote-st; W. B. Bartholomew, Gray's-inn; W. Berau, Bristol
Wightwick, Wm., Spencer-pl., Brixton-rd.; Newgate-street; Brunswick-st.; and Dover-road	Peter W. Fry, Cheapside
Wilkinson, Edward, 15, Margaret-st., Cavendish-square; and Horbling	G. Wiles, Horbling
Wilkinson, George, jun., 15, Everett-st., Russell-square; and North Walsham	G. Wilkinson, sen., North Walsham
Williams, Ebenezer Robins, 40, Upper Cumming-street, Pentonville; Claremont-square; and Edgbaston	R. Gillam, sen. Worcester; I. O. Jones, Liverpool; and R. Gillam, jun., Birmingham
Withers, Jas. Tuck, Sherborne, Dorset; and Bristol	H. W. Ravenscroft, Gray's-inn-square; and W. Craven, Guildhall-chambers
Wright, Egerton Leigh, 37, Woburn-sq.; and Wigan	R. Bloxham, New Boswell-court; R. Darlington, Wigan; and T. T. Taylor, Wigan
Wrigley, Barton, 5, Grove-terrace, Grove-road; Bernard-street; and Liverpool	J. Eden, Liverpool
Wyatt, William, 12, Cavendish-rd., Wandsworth-road; and 21, Stratford-place, Camden-town	N. Mason, 23, Red-lion-square

*Added to the List pursuant to Judge's Orders.*

Mander, Charles John, 38, Ladbroke-square; and Little Ealing, Middlesex	J. J. Millard, Cordwainers'-hall, London
Carter, Thomas, St. Peter's-terrace, Hammersmith; and Kingston-upon-Hull	Thomas Holden, jun., Kingston-upon-Hull

*At the Rolls.***APPLICATION TO BE RE-ADMITTED.***Easter Term, 1853.*

Marshall, William, George-street, Aston, Warwick-shire	John Moss, Derby
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*Queen's Bench.***APPLICATION TO BE RE-ADMITTED.***Last day of Easter Term, 1853.*

Marshall, William, George-street, Aston, Warwick-shire	John Moss, Derby
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## BUSINESS OF THE COURTS OF CHANCERY.

### VICE-CHANCELLOR WOOD.

NOTICE was given on the 14th instant, that when the parties desire any cause or claim set down for hearing may stand over, application must be made to the Court for that purpose at the latest on the day previous to its turn to be put into the paper, otherwise if called on it will be struck out and must be set down again at the bottom of the list.

## NOTES OF THE WEEK.

NOTICE TO THE JUDGES WHERE CASES IN THE SPECIAL PAPER ARE SETTLED.

UPON a case being called on in the Court of Exchequer, it was stated by Mr. Hoggins, who

had been engaged in it, that he believed it had been settled. The *Lord Chief Baron* said, that notice had not been given to the Judges' clerks that the parties had come to an arrangement, so as to save their Lordships the trouble of reading through the papers. It would be but respectful to the Court that such an intimation should be given as soon as possible, and his Lordship trusted that in future cases it would be done.

[It is probable that in the case in question the arrangement had not been concluded in time to give the Judges' clerks information so as to prevent the inconvenience to the Judges of uselessly perusing the papers.—Ed.]

## RECENT DECISIONS IN THE SUPERIOR COURTS AND SHORT NOTES OF CASES.

### Court of Appeal.

Anon. Jan. 15, 1853.

NOTICE OF REPLICATION.—SERVICE OF.—WHERE DEFENDANT'S ADDRESS UNKNOWN.

Held, that notice of replication, where an appearance has been entered by a plaintiff for a defendant whose residence is not known, should be served at the last known place of abode of such defendant and be advertised in the *London Gazette* and in the two local papers.

In this case an appearance had been entered by a plaintiff under the 29th Order of May, 1845, for a defendant whose residence was unknown.

*Renshaw* applied for the direction of the Court in reference to the service of notice of the replication.

The Court said, that the notice should be served at the last known place of abode of the defendant, and be advertised in the *London Gazette* and the two local newspapers.

*Storrs v. Benbow.* Jan. 18, 1853.

APPEAL AFTER EXPIRATION OF FIVE YEARS.—LEAVE.—PRACTICE.

Held, that the order under Order 6 of August 7 last, for leave to present an appeal from a decree, although more than the five years have elapsed as limited by Order 1, is to be obtained on petition verifying the special grounds for such order, and upon service of notice thereof.

THIS was an application under the 6th Order of August 7 last, for leave to set down for hearing an appeal from a declaratory order of Sir John Leach, made in 1833, in this ad-

ministration suit, whereby he had declared certain legacies were payable to such only of the testator's children as were *in esse* at the time of his death, and that a posthumous child was not therefore entitled.

*Shebbeare*, in support, referred to Order 1, which directs, that "no appeal from any decree, order, or dismissal, or any re-hearing of the case on which such decree, order, or dismissal is founded, shall be allowed, unless the same is set down for hearing, and the requisite notice thereof duly served, within five years from the date of any such decree, order, or dismissal respectively," and to the 6th Order, which provides, that "the Lord Chancellor, either sitting alone, or with the Lords Justices, or either of them, shall be at liberty, where it shall appear to him, under the peculiar circumstances of the case, to be just and expedient, to enlarge the periods hereinbefore appointed for a re-hearing, or an appeal, or for an enrolment."

The Court said, that the discretion could not be properly exercised without some formal statement of the facts by which they could be placed fully before the Court, and that the proper mode was to proceed by petition upon notice served on the infant.

Jan. 11.—*Holles v. Kindersley*—Case transferred to paper of Vice-Chancellor Wood.

—12.—*In re Fussell*—Stand over.

—12.—*In re Northampton Charities*—Order for appointment of new trustees.

—14.—*In re Cumming*—Time within which traverse of commission to be tried enlarged for six months.

—15.—*In re Midland Union Railway Company, ex parte Pearson's executors*—Appeal from Vice-Chancellor Stuart dismissed, with costs.



Jan. 15.—*Rawlins v. Daglish and others*—Appeal dismissed from Vice-Chancellor Stuart.  
— 17, 18.—*Edlestone v. Collins*—Cur. ad. vult.

— 18.—*In re Dover and Deal Railway Company, ex parte Mowatt and another*—Part heard.

### Lords Justices.

Jan. 12.—*In re Vale of Neath and South Wales Brewery Company, ex parte Wood*—Appeal allowed from Vice-Chancellor Stuart.

— 12.—*In re Dover, Deal, and Cinque Ports Railway Company, ex parte Mowatt*—Stand over.

— 12, 13.—*Attorney-General v. Sheffield Gas Consumers' Company; Sheffield United Gaslight Company v. Same*—Part heard.

— 14.—*Peacock v. Stockford*—Cur. ad. vult.

— 14.—*In re Tratt, ex parte James and another*—Part heard.

### Master of the Rolls.

Jan. 12.—*Barley and others v. Wyche*—Injunction granted.

— 13.—*In re British and American Steam Navigation Company, ex parte Myers*—Name removed from list of contributories.

— 14.—*Attorney-General v. Hall*—Lease set aside.

— 14.—*Attorney-General v. Smythies*—Order on petition for apportionment of income.

— 15.—*In re King's College Hospital Act, 1851, ex parte Jay*—Order on petition for payment of arrears of rent to petitioner.

— 15.—*Mathews v. Nichols*—Order for payment by defendant of trust money into Court and for appointment of new trustees.

— 15.—*Ball v. Newman*—Decree for specific performance of contract with costs.

— 17, 18.—*York and North Midland Railway Company v. Hudson*—Part heard.

### Vice-Chancellor Kindersley.

*Penny v. Goode*. Jan. 14, 1853.

PRODUCTION OF DOCUMENTS.—EXCLUSIVE POSSESSION IN DEFENDANTS.—OFFICERS OF COMPANY.

*On motion for the production of documents admitted by the answer of the treasurers and trustees of an insurance company to be in their possession, it did not appear that they were entitled to the exclusive possession thereof, and by their further answer they had now ceased to be officers: Held, dismissing the motion with costs, that the plaintiff was not entitled to production.*

T. H. Terrell appeared in support of this motion for the production of documents admitted by the defendants in their first answer to be in their possession. It appeared that at that time they were treasurers and trustees of the Westminster Fire Office, but a second an-

swer had been put in in which they stated were no longer such officers.

*Walford, contra.*

The Vice-Chancellor said, as it did not appear that these documents would have been in the exclusive possession of the defendants, even if they had continued in office, the motion must be refused with costs.

*Brooks v. Levy*. Jan. 15, 18, 1853.

JURISDICTION OF EQUITY IMPROVEMENT ACT.—EVIDENCE IN COLONIES.—VERIFICATION.

*Held, that the 15 & 16 Vict. c. 86, s. 22, is not retrospective in its operation as to the verification of certificates, &c., in the colonies. An order, however, having been made on petition for the payment of money out of Court to the petitioners, who resided in Australia and were entitled thereto on attaining 21, upon certificates of their birth extracted from the Jewish synagogue and verified before two Justices of the colony before the Act came into effect, the Court intimated such decision would not be disturbed.*

THIS was a petition for payment out of Court of a sum of money to the petitioners who resided in Australia, and to which they were entitled on attaining the age of 21. This fact was proved by the certificates of birth copied from the Jewish synagogue at Sydney, and verified by the seal of two Justices of the colony. A question had been raised, whether these certificates were sufficient, as they were verified before the 15 & 16 Vict. c. 86, came into operation.

*Cairns*, in support, referred to s. 22, which enacts, that "all pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the High Court of Chancery" "shall and may be sworn and taken" "in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorised to administer oaths," "and the Judges and other officers of the said Court of Chancery shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such pleas," &c.

The Vice-Chancellor, on the hearing, said, that the statute was retrospective in operation, and that the evidence was sufficient; but now stated, that, after conferring with the other Judges, it must be considered the Act was not retrospective, but as leave had been given to receive the affidavits, that decision would not be disturbed, but the case must not be drawn into a precedent.

*Sweeting v. Sweeting*. Jan. 18, 1853.

LEGACY DUTY ON SUM APPOINTED UNDER POWER IN WILL BY WAY OF JOINTURE,

AND IN BAR OF DOWER. — ATTORNEY-GENERAL'S COSTS.

*A testator by his will gave to his son a power to appoint an annuity by way of rent-charge on real estate, in favour of any wife he should marry, by way of jointure and in lieu of dower. The son appointed by deed a sum of 400l., and on his death a suit was instituted to administer his estate: Held, that a legacy duty of 10 per cent. was payable, and that the costs of the Attorney-General claiming the same must be paid by the legatee.*

MR. SWEETING, by his will, gave to his son power to appoint as a rent-charge on his real estate an annuity to the wife such son should marry, by way of jointure and in satisfaction of dower. The son appointed to her a rent-charge of 400l. by deed, and upon his death a question was raised whether the gift was subject to legacy duty, under the 45 Geo. 3, c. 28, s. 4.

*W. M. James* for the Crown, referred to *Attorney-General v. Lord Henniker*, 21 Law J., N. S. Exch. 293.

*Follett and Kinglake* for the wife, cited *Attorney-General v. Pickard*, 3 M. & W. 552; 6 M. & W. 348.

The Vice-Chancellor said, that although there was in effect a condition annexed to the gift, that the wife should release her right of dower, yet it amounted to a gift of a legacy within the Act, and as it was for the benefit of the wife was chargeable with the duty of 10 per cent.,—the costs of the Attorney-General to be paid by the legatee.

Jan. 12.—*Ex parte Incumbent of St. John's, Holloway*, in *re Dickenson's Trustees*—Report approving of charity scheme confirmed.

— 13.—*Murray v. Bogue*—Injunction refused.

— 15, 17.—*In re Banwen Iron Company*—Motion refused, with costs, to review Master's decision as to compromise.

— 17.—*In re Kincaid's Estate*—Order for settlement of fund on wife where husband insolvent.

Vice-Chancellor Stuart.

*May v. Biggenden and another*. Jan. 12, 1853.

EXAMINATION OF DEFENDANT VIVA VOCE AT HEARING. — SUBPŒNA. — JURISDICTION.

*Held, that the Court has not power under the 15 & 16 Vict. c. 86, s. 39, to make an order for leave to the plaintiff to issue a subpoena on a defendant to appear on the hearing, for the purpose of being examined orally.*

*W. D. Lewis* appeared in support of this motion, for an order for leave to the plaintiff to issue a subpoena ad test. on one of the defendants to appear to give evidence on the hearing,

under the 15 & 16 Vict. c. 86, s. 39.<sup>1</sup> Publication had passed, and the cause been set down for hearing.

*Basalgette and J. Hinde Palmer* for the defendants, contra.

The Vice-Chancellor said, the 39th section conferred no authority on the Court to make the order asked, and the motion must therefore be refused with costs.

Jan. 12.—*Somerville v. Jamieson*—Leave to file special claim.

— 12, 13, 14.—*Fooks v. London and South Western Railway Company*—*Cur. ad. vult.*

— 15, 17.—*Rodgers v. Nowill*—Motion refused, without costs, to commit for breach of injunction.

— 18.—*Colombine v. Penhall; Penhall v. Müller*—Part heard.

Vice-Chancellor Wood.

*Forbes v. Forbes*. Jan. 11, 15, 1853.

FURTHER EXAMINATION OF WITNESSES.—FORM OF ORDER FOR.

*Motion refused to discharge an order which had been obtained by the plaintiff to examine witnesses in Scotland, on the ground that it omitted to restrict the examination to witnesses who had not been already examined in the matter.*

THIS was a motion to discharge an order which had been obtained by the plaintiff in this suit to examine witnesses in Scotland.

*Roll and Beales* in support, on the ground the order should have restricted the examination to witnesses who had not already been examined in reference to the same matters.

*Anderson and A. J. Lewis*, contra.

The Vice-Chancellor, after inquiring as to the practice in respect of the form of order in such cases, said that the order for the further examination of witnesses was as of course without any restrictive words, and refused the motion accordingly—the costs to be costs in the cause.

*Braine v. Braine*. Jan. 13, 1853.

INJUNCTION BILL. — STAMPED WITH ADHESIVE STAMPS.

*Clerk of Records and Writs directed to receive an injunction bill with eight half-a-crown adhesive stamps affixed, where there was insufficient time to take it to the Stamp*

<sup>1</sup> Which enacts, that "upon the hearing of any cause depending in the said Court, whether commenced by bill or by claim, the Court, if it shall see fit so to do, may require the production and oral examination before itself, of any witness or party in the cause, and may direct the costs of and attending the production and examination of such witness or party, to be paid by such of the parties to the suit or in such manner as it may think fit."

*Office to have the ordinary 1l. stamp impressed.*

*Bazalgette* applied for the direction of the Court on the Clerk of Records and Writs to affix eight adhesive stamps of the value of half-a-crown each, to a bill for an injunction which had been engrossed on unstamped parchment, there not being time to have the ordinary stamp affixed at the Stamp Office.

The 6th Order of October 25, directs, that the fees specified in the second part of the schedule shall be payable, and the same "shall be collected, not in money, but by means of stamps denoting the amount of such fees, stamped or affixed, at the expense of the parties liable to pay the fees, on or to the vellum, parchment, or paper on which the proceedings in respect whereof such fees are payable are written, printed, or which may be otherwise used in reference to such proceeding."

The *Vice-Chancellor* granted the application.

*Duffield v. Sturgis.* Jan. 14, 1853.

JURISDICTION OF EQUITY IMPROVEMENT ACT.—FILING REPLICATION.—WHERE MOTION FOR DECRETAL ORDER.

*A motion was refused for a direction on the Clerk of Records and Writs to file a replication where notice of motion for a decretal order had been given under the 15 & 16 Vict. c. 86, s. 26, and the 28th Order of August 7.*

THIS was a motion for a direction on the Record and Writs Clerk to file a replication in this case, where notice of motion for a decretal order had been given.

By s. 26 of the 15 & 16 Vict. c. 86, it is enacted, that "in suits in the said Court commenced by bill, where notice of motion for a decree or decretal order shall not have been given, or, having been given, where a decree or decretal order shall not have been made thereon, issue shall be joined by filing a replication in the form or to the effect of the replication now in use in the said Court; and where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, he shall be considered to have traversed the case made by the bill." And by the 28th Order of August 7 last, that "where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, so that under the 15 & 16 Vict. c. 86, s. 26, he is to be considered as having traversed the case made by the bill, issue is nevertheless to be joined by filing a replication in the form or to the effect of the replication now in use.

*Hare* in support.

The *Vice-Chancellor* held, that the replication was unnecessary, and refused the motion.

Jan. 12.—*Brenan and others v. Preston and others*—Part heard.

—12, 13.—*Keyse v. Haydon*—Decree for specific performance of contract.

Jan. 13.—*Deaville v. Deaville*—Decree for payment of debt out of testator's assets.

—14.—*Blake v. Cox*—Bill dismissed, with costs.

—15.—*Boys v. Brady*—*Cw. ad. vult.*

—17.—*Nichols v. Hawkes*—Decree for specific performance.

—17.—*Clancy v. Hill*—Decree for plaintiff.

—14, 18.—*Bernasconi v. Atkinson*—Judgment on construction of will.

—18.—*Oppenheim v. Henry*—Judgment on further directions and costs.

### Court of Queen's Bench.

*Corcoran v. Gurney.* Jan. 18, 1853.

VESSEL.—STRANDING.—QUESTION WITH-OUT PLEADINGS UNDER COMMON LAW PROCEDURE ACT.

*Upon a case stated under the 15 & 16 Vict. c. 76, it appeared that a vessel was driven by stress of weather to run out of her course and to take refuge in a tidal harbour to save the vessel and crew, and that she made for the harbour at low water, and grounded inside such harbour, and was unable to be got out for two months: Held, that the facts showed a "stranding," and not a mere "taking the ground" in the ordinary course of navigation, and that the plaintiff was therefore entitled to recover on the policy of insurance.*

THIS was a case stated by consent without pleading under the 15 & 16 Vict. c. 76, from which it appeared that the plaintiff's vessel was obliged to go out of her course by stress of weather, and that the captain, in order to save the vessel and the lives of the crew while off Palay and dragging her anchor in a gale, had run her into a tidal harbour at Sauson, near Calais, in France, at low water. It appeared that the ordinary tides were insufficient to float her in the harbour, and that a delay of two months took place before she could be got out. The question was, whether this amounted to a "stranding" within the meaning of the memorandum of insurance, or a mere "taking the ground" in the ordinary course of navigation.

*Bovill*, for the plaintiff, contended the facts constituted a stranding; Sir *F. Thesiger*, for the defendant, contra.

The Court said, it had been laid down by Lord *Tenterden*, that where a vessel was in her ordinary and usual course of navigation, upon the natural ebb of the tide, so that after taking the ground she floated again with the ordinary advance of the tide, it was not a "stranding," and by *Tindal, C. J.*, that it was a "stranding," where the taking the ground arose from accidental circumstances. It was clear that if the vessel had been run on a bank outside the harbour, she would have been stranded, and it could make no difference that she took the ground as soon as she got into the harbour, inasmuch as the peril arose from the entry at a time when in ordinary cases it would not have been proper such a course should be

pursued, and to which she was driven by stress of weather. The vessel could not therefore be considered as having met with the accident in the ordinary course of navigation, and the plaintiff was therefore entitled to judgment.

Jan. 11.—*Regina v. Vestry of St. Pancras*—Leave to deliver to Judges written copy-order of Poor Law Board, where order out of print.

—12.—*Tallis v. Tallis*—Judgment for the plaintiff on demurrer to plea.

—12.—*Mayor of Berwick v. Oswald*—Judgment for plaintiff.

—12.—*Regina v. Wilson*—Rule nisi to set aside side-bar rule for taxation of costs.

—12.—*Regina v. Barnet*—Rule nisi to quash inquisition found by coroner's jury.

—12.—*In re John Smith*—Rule discharged on payment of costs to strike attorney off the roll.

—12.—*In re Richard Sill*—Rule enlarged.

—13.—*Regina v. Walsh, in re Walsh and another*—Rule absolute for prohibition.

—13.—*Holt v. Ely*—Rule nisi to enter a nonsuit on leave reserved.

—13.—*Bessell v. Wilson*—Cur. ad. vult.

—14.—*Cromont v. Ashley and wife*—Rule nisi to set aside nonsuit and for new trial.

—15.—*Regina (on prosecution of Overseers of Christ Church) v. Fletcher*—Judgment for the prosecution.

—15.—*Dugdale v. Reginam*—Conviction affirmed.

—15.—*Regina v. Plant*—On appeal, rate confirmed.

—17.—*Heywood v. Potter*—Rule discharged to enter verdict for plaintiff.

—17.—*In re Hawley*—Habeas corpus refused.

—17.—*Hastings v. Brown*—Rule absolute to set aside verdict for plaintiff and to enter a nonsuit.

### Queen's Bench Practice Court.

Jan 11.—*Cecil, administratrix, v. National Mercantile Life Insurance Company*—Rule nisi for inspection of policy.

—11.—*Regina v. Smith*—Rule nisi for quo warranto on councillor of borough of Leeds.

—11.—*Regina v. Carr*—Rule nisi for quo warranto on councillor of Oxford.

—11.—*Ezparte Boram*—Rule for habeas corpus to bring up body of infant.

—17.—*Regina v. Newhurst*—Application refused for taxation of defendant's costs on indictment for libel, where verdict for defendant on plea of Not Guilty, and for the Crown on the plea of justification.

—18.—*In re Boram*—Cur. ad. vult.

### Court of Common Pleas.

Jan. 11.—*Mitchell and wife v. Crassweller*—Rule nisi to enter verdict for plaintiffs.

—11.—*Evans v. Edmonds*—Rule nisi for new trial.

Jan. 12, 13.—*Moffatt v. Dickson, clerk*—Cur. ad. vult.

—14.—*Volant v. Soyer and another*—Rule refused for new trial.

—14.—*Dalton v. Midland Railway Company*—Rule nisi to enter verdict for defendants or for a nonsuit.

—17.—*Quartermain and others v. Bittleston and others*—Cur. ad. vult.

—18.—*Peterson v. Eyre*—Rule absolute for new trial.

—18.—*Duncan v. Tindal*—Stand over.

### Court of Exchequer.

*Price v. Hewitt.* Jan. 12, 1853.

RULE FOR LEAVE TO PLEAD AND DEMUR.

—AFFIDAVIT OF TRUTH OF MATTERS.

Rule absolute for leave to the defendant to plead and demur to the declaration under the 15 & 16 Vict. c. 76, s. 80,—although there was no affidavit of the truth of the matter proposed to be pleaded,—on the ground that such affidavit was only required where the plea was by way of confession and avoidance, and not a mere traverse, of the averments in the declaration.

THIS was a rule nisi on the defendant to be at liberty to plead and demur to the declaration under the 15 & 16 Vict. c. 76, s. 80.<sup>1</sup> It appeared that the proposed plea traversed an averment in the declaration, but the affidavit in support did not allege the traverse was true.

*Petersdorff* showed cause against the rule.

The Court held, that it was only necessary to swear to the truth of the matters pleaded where they were pleaded by way of confession and avoidance, and not where the plea merely traversed an averment in the declaration, and the rule was therefore made absolute.

Jan. 11, 12.—*Morgan v. Clifton, Bart.*—Arrangement come to.

—13.—*Waters v. Towers*—Rule absolute to increase verdict.

<sup>1</sup> Which enacts, that "either party may, by leave of the Court or a Judge, plead and demur to the same pleading at the same time, upon an affidavit by such party, or his attorney, if required by the Court or Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and it shall be in the discretion of the Court or a Judge to direct which issue shall be first disposed of."

Jan. 14.—*Anderson and others v. Thornton*—Rule nisi for new trial on the ground of verdict being against evidence and of misdirection—*Cur. ad. vult.*

— 15.—*Waterford, Wexford, Wicklow, and Dublin Railway Company v. Peacock*—Rule refused to set aside nonsuit.

Jan. 15.—*Simmons v. Lallington*—Rule nisi to enter verdict for defendant on leave reserved.

— 18.—*Hills v. Nutson*—*Cur. ad. vult.*

— 18.—*De Clermont v. Bradbury and another*—Part heard.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### BILLS OF EXCHANGE.

1. *Indorsee against acceptor.—Plea issuable.*—In assumpsit by indorsee against acceptor of a bill of exchange, the defendant—being under terms—pleaded, to the further maintenance of the action, that he was indebted to the drawer in a sum less than the amount of the bill; that, before the acceptance, it was agreed between him and the drawer, that he should pay him such lesser sum by four instalments; that he duly paid three of such instalments before, and the fourth after, the commencement of the action; and that the bill was indorsed to the plaintiff without value or consideration: *Held*, not an issuable plea. *Besant v. Cross*, 10 C. B. 895.

2. *Parol contract inconsistent with.*—It is not competent to the acceptor of a bill of exchange to set up a parol contract inconsistent with the contract upon the face of the bill. *Besant v. Cross*, 10 C. B. 895.

3. *Plea of conditional payment by a stranger giving the plaintiff his acceptance for the debt, the bill so given being at the time of suit outstanding in the hands of an indorsee.*—To debt on simple contract for goods sold and delivered, work and labour, &c., the defendant pleaded, "as to 33*l.* 10*s.*, parcel of the debt in the declaration mentioned, and the cause of action in respect thereof," that, after the accruing of the causes of action in the declaration mentioned, and before the commencement of the suit, the plaintiff drew a bill on C. for 33*l.* 10*s.*, payable to the plaintiff's order three months after date; that C. accepted the bill, and delivered it to the plaintiff, and the plaintiff received it, for and on account of the said sum of 33*l.* 10*s.*, parcel of the debt in the declaration mentioned, and the causes of action in respect thereof; and that the plaintiff indorsed and delivered the bill to one D., who was, before and at the time of the commencement of the suit, the holder of the bill, and entitled to sue C. thereon.

*Held*, that the giving of the bill by C. must be taken to be a conditional payment on behalf of the defendant; that the condition to defeat it not having happened, it operated as an absolute payment; and that it might be, and had been, adopted by the defendant in his plea, and consequently that it barred the action. *Belshaw v. Bush*, 11 C. B. 191.

Cases cited in the judgment: *Wankford v. Wankford*, 1 Salt. 299; *Freakly v. Fox*, 9 B. & C. 130; *Harmer v. Steele*, 4 Exch. R. 1;

*Ayliffe v. Skrimshire*, Carth. 65; *Comberbach*, 124; *Gibbons v. Vonillon*, 8 C. B. 483; *Fowell v. Forrest*, 2 Saund. 48; *Stracey v. Bank of England*, 6 Bingh. 754; 4 M. & P. 639; *Ford v. Beech*, 11 Q. B. 857; *Overson v. Harvey*, 9 C. B. 324; *Griffith v. Owen*, 13 M. & W. 58, 61; *James v. Williams*, 13 M. & W. 828, 833; *Davis v. Gyde*, 2 A. & E. 623; *Worthington v. Wigley*, 3 New Ca. 454; 4 Scott. 558; *Jones v. Broadhurst*, 9 C. B. 175.

4. *Denial of authority to draw or indorse.*—The acceptor of a bill of exchange, payable to the order of the drawer, cannot deny the authority of the drawer to draw or indorse such bill. Therefore, to an action on a bill of exchange drawn by A. B. & Co., and payable to their order twelve months after date, and accepted by the defendant, and indorsed by A. B. & Co. to the plaintiffs, a plea, that A. B. & Co., before, and at, and since the time of the making and indorsing the said bill, were and have been a body corporate, by virtue of certain letters patent; and that the bill purported to be, and was drawn by the said body corporate, and as such accepted by the defendant, and not otherwise; and that the said body corporate had not at any time any authority to indorse, issue, or negotiate any bill of exchange, or to transfer the right to receive payment thereof by indorsement, in the name of the said company, or otherwise; was held bad on demurrer. *Hallifax v. Lyle*, 3 Exch. R. 446.

Cases cited: *Drayton v. Dale*, 2 B. & C. 293; *Taylor v. Croker*, 4 Esp. 187.

5. *Venue.—Delivery of bill.—Cause of action.*—A bill of exchange was drawn and accepted, and the indorser put his name upon it, within the city of London, but it was delivered to the indorsee in the county of Middlesex: *Held*, that the cause of action did not arise within the city of London. *Buckley v. Huns*, 5 Exch. R. 43.

6. *Delivery of.—Pleading.—Admission.*—To an action upon certain bills of exchange, drawn by M. & Sons upon, and accepted by the defendant, and payable to the plaintiff at certain periods after date, the defendant pleaded that, after the bills became due, M. & Sons made an agreement with the acceptor to discharge him on receiving 2*s.* 9*d.* in the pound upon, *inter alia*, the said acceptance, in consideration of the payment of a certain specified sum in settlement of their differences of account, and that the plaintiff took the bills after the agreement.

The plea contained averments, that *M. & Sons* were the holders of the bills at the time the agreement was made, and that they afterwards delivered them to the plaintiff. The replication traversed the former of these allegations: *Held*, that although the replication admitted a delivery of the bill by *M. & Sons* to the plaintiff after the making of the agreement, that it did not admit such a delivery as to give the plaintiff a new title to the bills, and, consequently, the replication was good as putting in issue a substantial averment in the plea. *Corlett v. Booker*, 5 Exch. R. 197.

7. *Bill of exchange, when complete.*—*Acceptance, place of.*—The acceptance of a bill, though revocable at any time before delivery, is, if unrevoked, complete as soon as written on the bill; and the contract is made in that place where the bill is accepted, not where it is issued. *Regina v. Birch, in re Wilde v. Sheridan*, 1 L. & M. 56.

Cases cited in the judgment: *Roff v. Miller*, 19 Law J., C. P. 278; *Cox v. Troy*, 5 B. & A. 474.

### PROMISSORY NOTES.

1. *Contemporaneous agreement between plaintiff and defendant.*—Assumpsit on a promissory note made payable by defendant to the plaintiffs, as executors of *S.*, on demand, with interest.

Plea, that, at the same time as the making of the note, an agreement in writing was made, between the defendant and other persons and the plaintiffs, that the note should not become due and payable until one *E.* attained the age of 25 years; or, if he should die under that age, then upon certain moneys becoming divisible under the will of *S.*, and that *E.* was still living and under 25. Issue was joined upon a replication traversing the agreement.

It appeared on the trial that *S.*, by her will, had bequeathed half of her residuary personal estate to her daughter, defendant's wife, and had directed the plaintiffs, as her executors, to place out at interest the remaining half, until the said *E.*, one of her three grandsons, should attain the age of 25, and to divide the same, on that event, equally between her grandsons. After the death of testatrix, the plaintiffs paid over half the residue to defendant; and *E.* being then under 25, the plaintiffs invested the remaining half of the residue in promissory notes payable on demand and bearing interest, one of such notes being the note mentioned in the declaration. At the time of making this note, an indenture, to which the defendant, the grandsons, and the plaintiffs were parties, was executed by all the parties thereto except the plaintiffs. The indenture, after reciting the will and death of testatrix, and the payment of half the residue to the defendant, recited that the grandsons had requested the plaintiffs to invest the remaining half of the residue upon the security set forth in the schedule to the deed, "until the same" would "be divisible under

the trusts of the said will; which they" had "agreed to do upon" the grandsons executing the indenture, "in order to indemnify" the plaintiffs "against any loss or diminution that" might "happen to the said trust estate and moneys, or the interest or income thereof, by the failure of the said securities;" and there was a covenant by the grandsons, in consideration of the premises, to indemnify the plaintiffs accordingly; and a further covenant by the two other grandsons, that *E.*, who was then a minor, should execute the indenture on attaining his majority. The security referred to, as set forth in the schedule, consisted of the promissory note in the declaration, and other notes payable also on demand, with interest. The plaintiffs were present at the execution of the deed, assented to it, and acted upon it. A verdict was found for the defendant.

*Held*, by the Court of Queen's Bench, that the plaintiffs were bound by the indenture, the meaning of which was, that the securities mentioned in the schedule should remain outstanding until *E.* attained 25; and that the plea was proved.

*Held*, by the Court of Exchequer Chamber, on error, that the agreement in the indenture was collateral to the agreement in the declaration, because, though stated to be contemporaneous, it was not stated to be parcel of it, and was not between the same parties; that, as a collateral agreement, it was invalid for want of consideration, and was no defence, being, at most, a covenant not to sue for a limited time, and also a covenant with other covenantees than the defendant alone; and that the plea was bad, and the plaintiffs entitled to judgment, notwithstanding the verdict. *Webb v. Spicer*, 13 Q. B. 886, 894; *Same v. Salmon*, ib.

Case cited in the judgment: *Ford v. Beech*, 11 Q. B. 852.

2. *Effect of security under seal given by one of two makers.*—If one of two makers of a joint and several promissory note gives the holder a deed of mortgage to secure the amount, with a covenant to pay it, the other maker is not thereby discharged; for the remedy on the specialty is not co-extensive with the remedy on the note. *Ansell v. Baker*, 15 Q. B. 20.

Cases cited in the judgment: *Solly v. Forbes*, 2 Brod. & B. 38; *Twopenny v. Young*, 3 B. & C. 208, 211.

3. *Payable to maker's own order, with memorandum at foot for payment at a particular place and indorsed by maker in blank.*—A note payable to the order of the maker, and by him indorsed in blank, may be treated as a note payable to bearer; and that notwithstanding there is a memorandum at the foot of the note, indicating a particular place of payment. *Masters v. Baretto*, 8 C. B. 433.

4. *Given for the debt of a third party.*—*Sufficiency of consideration.*—In assumpsit by payee against maker, on a promissory note payable on demand, with interest, the defendant

pleaded, that the note was made by the defendant as a collateral security for a debt due from one J. S. to the plaintiff; that the defendant was not at the time of making the note, or ever, liable to pay the debt, or to give the note as a security for the same; and that there never was any other consideration for the making of the note, save as aforesaid: *Held*, a sufficient plea of no consideration, after verdict. *Crofts v. Beale*, 11 C. B. 172.

5. *Personal liability of directors of joint-stock company.*—The defendants, who were directors of a joint-stock newspaper company, gave the plaintiff the following promissory note, in part payment for the purchase of a newspaper, which the company had agreed to purchase of him:—

"On demand, we jointly and severally promise to pay to Mr. L. H., or order, the sum of 250*l.* value received, for and on behalf of the Wesleyan Newspaper Association." Signed by the defendants, "Directors:—"

*Held*, that the words "jointly and severally" were equivalent to jointly and personally; and that the defendants were therefore personally liable to the plaintiff on the note. *Healey v. Story*, 3 Exch. R. 3.

6. *Form of.*—The following document,—  
"Nottingham, August 5, 1844. Borrowed of Mr. J. W. the sum of 200*l.*, to account for, on behalf of the Alliance Club, at months' notice, if required,"—was held not to be a promissory note. So also, a similar instrument, with the blank filled up with the word "two," was held not to be a promissory note. *White v. North*, 3 Exch. R. 689.

Case cited in the judgment: *Horne v. Redfearn*, 4 Bing. N. C. 433.

7. *Signed as "widow."*—*Plea of coverture.*—*Estoppel.*—In an action on a promissory note, to which the defendant pleads her coverture only, it appeared the note was signed by the defendant "widow:" *Held*, that such representation did not bind her by way of estoppel. *Cannam v. Farmer*, 3 Exch. R. 698.

8. *Statute of Limitations.*—*Payment of interest on note.*—A parish vestry having resolved to borrow money for the purpose of building almshouses, the money was in 1830 advanced by the plaintiff upon the security of a promissory note payable to him, or bearer, on demand, with interest, and signed by the defendants thus:—"J. H., churchwardens; J. E., Overseer, or others for the time being." The interest had been regularly paid by the overseers for the time being up to 1847, but the defendants had never paid the interest, or in express terms authorised the parish officers to pay it for them. The defendants having pleaded the Statute of Limitations to an action on the note,—*Held*, that it was a question for the jury, whether, by the form of the note, the defendants had not constituted the parish officers for the time being their agents for the payment of interest, so as to take the case out of the statute. *Jones v. Hughes*, 5 Exch. R. 104.

9. *Inland note.*—*Notice of protest unnecessary.*—7 Geo. 4, c. 67.—*Return to stamp office under that Statute not condition precedent to right to banking company on note.*—In an action by the manager of a joint-stock banking company, upon a note indorsed by the defendants to the company, the declaration stated, that one L. made his promissory note at L., in Scotland, to the order of the defendants, and delivered the said note to them, and that they indorsed it to the company; that the note was not paid, although duly presented for payment, and that it was protested for payment, *whereof* the defendants had notice. Pleas, 1st, that the defendants had no notice of the said note being so protested, *modo et formâ*; and 2ndly, that the company, between the 25th of May and the 25th of July, 1847, did not deliver at the Stamp office a return in pursuance of the 7 Geo. 4, c. 67. Verification.

*Held*, that the word "*whereof*," after verdict, was not confined to the allegation of protest, and that the declaration was good in arrest of judgment.

*Held*, also, that both the pleas were bad *non obstante veredicto*: the first on the ground that no protest of an inland note, which it was to be taken to be, was necessary; and the second plea, on the ground that the due making of the return mentioned in that plea was not a condition precedent to the company's right to recover upon the note. *Bonar v. Mitchell*, 5 Exch. R. 415.

## LAW OF ARBITRATION.

1. *Attachment for non-performance.*—*Affidavits impeaching award.*—*Evidence.*—In showing cause against a rule for attachment for non-performance of an award, affidavits cannot be used to show that the award is impracticable, uncertain, or not final, nor can the award be impeached, except for defects apparent on the face of it. *In re Butler and Masters*, 13 Q. B. 341.

2. *Setting aside.*—*Mistake of arbitrator.*—*Matter in difference omitted.*—It is not an invariable rule that the Courts will not set aside an award on the ground that the arbitrator has, by mistake, adjudicated wrongly on a matter in difference.

Where, on a question of account, both parties to a suit agreed before an arbitrator, that a given sum was due to the plaintiff on a particular item, and it appeared by the arbitrator's affidavit, that he, conceiving this to be no longer a matter in difference, omitted the same in the amount which he awarded to the plaintiff, the Court, on motion by the plaintiff (who had objected to the adjudication without loss of time after delivery of the award), set the award aside. *Hutchinson v. Shepperton*, 13 Q. B. 955.

Cases cited in the judgment: *In re Hall and Hinds*, 2 M. & G. 847; *Haggar v. Baker*, 15 M. & W. 309.

3. *Covenant to refer differences.*—*Rule of*

*Court.*—*Enlargement of time by Judge.*—A covenant by indenture, that any differences which may thereafter arise between the parties touching the matters of the indenture shall be, and they are thereby, referred to an arbitrator named, constitutes a submission which may be acted upon and made a rule of Court, under Stat. 9 & 10 Wm. 3, c. 15, when such differences arise.

Although the covenant to abide the award be expressly subjected to the proviso, "so as" the award be made, &c., within a given time, with power to the arbitrator to enlarge the time, but "so as" the enlargement shall not extend beyond a day named, yet if the submission can, by the agreement, be made a rule of Court, a Judge may, before the expiration of the limited period, or of such enlargement, extend the time for making the award to a day later than the last day named in the submission. *Parkes v. Smith*, 15 Q. B. 297.

4. *Covenant to refer future differences.*—*Plea of award.*—*Bar.*—*Estoppel.*—Declaration in covenant stated that, on a dissolution of partnership between plaintiff, defendant and another, defendant, by a certain indenture, covenanted that he and the other party last mentioned would pay plaintiff, as the outgoing partner, 6,800*l.* by instalments; but five instalments, amounting to 4,800*l.*, parcel of the 6,800*l.* were made, subject to reduction in a specified ratio, if the profits which the partnership had derived from connexions of the plaintiff should fall short of a certain amount. Non-payment of the 4,800*l.*, as well as of the other instalments, amounting to 2,000*l.*, was assigned as a breach.

Plea, as to the 4,800*l.* (setting out the deed on oyer), that, by a further covenant, it was agreed that, if any difference should arise touching the sums to be deducted, it should be referred to J. P., an arbitrator, to award what amount, not exceeding 4,800*l.*, should be deducted; that such difference did arise, and thereupon plaintiff, defendant, and the other parties submitted themselves to refer, and did refer, the said difference to J. P., who awarded that 4,800*l.*, being the whole amount of the said five instalments, should be deducted from the 6,800*l.*; and that defendant, before the commencement of this action, in pursuance of the said award claimed to deduct, and did deduct, the said 4,800*l.*, "from the said five instalments," whereby the said 6,800*l.*, before the commencement of this suit, was reduced to 2,000*l.*, to be paid to plaintiff pursuant to the indenture.

*Held*, on demurrer, that the matter alleged was not merely an estoppel, but that the plea was a good plea in bar. *Parkes v. Smith*, 15 Q. B. 297.

5. *Submission, what is, within Stat. 9 & 10 Wm. 3, c. 15.*—*H. and L. agreed, by deed, that H. should purchase property of L., at a price to be ascertained by arbitration; the conveyance to be made on payment of the money. The agreement was made a rule of Court. The arbitrator having awarded the*

sum, L. tendered a conveyance to H., and demanded the money of him; but he would not pay. The Court refused to grant an attachment against H. as for non-performance of an award under Stat. 9 & 10 Wm. 3, c. 15. *Hemingway's Arbitration*, 15 Q. B. 305, *n.*

6. *What is a dispute that hinders making an award, within Stat. 6 & 7 Wm. 4, c. 71, s. 45.—Who is in possession of the tithe, for the purpose of an award.*—The award to be made by Tithe Commissioners under the Commutation Act, 6 & 7 Wm. 4, c. 71, is for the purpose only of settling disputes only between tithe-owner and land-owner, and not of deciding questions of title between rival claimants of tithe.

Therefore, where tithes of agistment were claimed by both rector and vicar, and the vicar called upon the Commissioners to determine such claims before making their award,

*Held*, on return to a mandamus, that the Commissioners were not bound so to determine, the difference not being one, within sect. 45, by which the making of the award was hindered; but that they would do rightly in awarding rent-charges for the tithes, including that of agistment, to the parties respectively in possession, leaving them to litigate the title subsequently, as they might do, under section 71, notwithstanding the award.

No statement appearing as to the receipt of agistment-tithe by any party: *Held*, that the Commissioners might properly consider the rector as the person in actual possession, with sect. 12 of the Statute. *Regina v. Tithe Commissioners*, 15 Q. B. 620.

7. *Time for moving to set aside award.—Taxation of costs.*—A cause and all matters in difference between the parties were referred by an order of Nisi Prius, by which a verdict was taken for the plaintiff, subject to an award,—the costs of the cause to abide the event, and the costs of the reference and award to be in the discretion of the arbitrator. The arbitrator by his award ordered that the verdict entered for the plaintiff should stand, and directed that the defendant should pay to the plaintiff the costs of the reference and award; *Held*, that the plaintiff was not entitled to have an allocatur for the costs, or to sign judgment, until the expiration of the proper time for moving to set aside the award. *Jones v. Ives*, 10 C. B. 429.

Case cited in the judgment: *Hobdell v. Miller*, 2 Scott, N. R. 163.

8. *Finality of award.—Order under 1 & 2 Vict. c. 110, s. 18, in the discretion of the Court, and grantable only where an attachment would be granted.*—A cause and all matters in difference were referred to an arbitrator, who awarded as follows:—"Having heard and duly and maturely weighed and considered the several allegations, vouchers, and proofs brought before me in pursuance of the said reference, I do make and publish this my award in writing of and concerning the several premises so referred as aforesaid." He then disposed of the several issues, as directed that the defendant



should pay a certain sum to the plaintiff, and that, upon payment of that sum, the plaintiff should execute and deliver to the defendant a general release: *Held*, that the award was sufficiently final, and disposed of all the matters in difference referred.

The Court, however, refused to make an order on the defendant to pay the sum awarded, pursuant to the 1 & 2 Vict. c. 110, s. 18,—the case not being one in which they would have granted an attachment. *Creswick v. Harrison*, 10 C. B. 441.

Case cited in the judgment: *Birks v. Trippet*, 1 Wms. Saund. 35, a.

9. *Authority of arbitrator.*—"Request."—The declaration stated, that a certain difference had arisen and was depending between A. and B. touching certain railway shares which A., at the request of B., had purchased for B., and for which A. had paid 12*l.*; that, for putting an end to the said difference, A. and B. submitted themselves to the award of C. to be made between them of and concerning the said difference; that B. promised to perform the award; that C. made his award of and concerning the said difference, and did thereby award that he decided in favour of A., and that 50*l.*, which had been deposited by A. with B., was in part payment of the said 20 shares, and A. by his award did then request B. to pay the balance of the account forthwith; and that B. refused to pay A. the balance of the said account, amounting to 72*l.*, according to the tenor and effect of the award.

*Held*, that the arbitrator's authority to make the award sufficiently appeared, although the nature of the difference was not specifically stated; and that the "request" to pay amounted to a direction.

But, *semble*, that the direction to pay "the balance of the account," would have been objectionable, if pointed out as cause of special demurrer. *Smith v. Hartley*, 10 C. B. 800.

10. *Rule for payment of money.*—Filing or depositing original award.—Before a rule for payment of money in pursuance of an award can be drawn up, the award must be filed or deposited in the Rule Office. *In re Davis*, 1 L. & M. 11.

11. *Practice on drawing up rule for payment of money where award in hands of third party.*—Where an award is deposited by way of security in the hands of a third party, the officers in the Rule Office, on drawing up a rule nisi for payment of money under the award, will receive it as a deposit from the holder, to be returned to him as soon as the rule is disposed of. *In re Davis*, 1 L. & M. 11.

## MERCANTILE LAW.

### BOTTOMRY.

1. *Master acting as owner's agent.*—A master of a ship, who borrows money on bottomry, for the repairs of the ship, acts exclusively as the agent of the owner. *Benson v. Duncan*, 3 Exch. R. 644.

2. *Shipowner's implied promise to indemnify*

*owner of cargo.*—*Perils of the seas.*—Therefore, where the master of a ship, damaged by perils of the seas, hypothecated at a foreign port, by one bottomry bond, for necessary repairs, the ship, freight, and cargo, amongst which were the plaintiff's goods, and the ship and freight having realised less than the sum borrowed, the plaintiff was obliged to contribute towards the difference, and also to pay his proportion of the costs of a suit instituted in the Court of Admiralty by the obligee of the bond: *Held*, on error, in the Exchequer Chamber (affirming the judgment of the Court of Exchequer), that the plaintiff might maintain an action against the owner of the ship on an implied promise to indemnify him; and that a plea, stating that the bond was executed by the master without express authority from the defendant, and that, when the same was executed, the cost of repairs exceeded the value of the ship and freight, and, as soon as the defendant had notice, he abandoned the ship and freight, and never did ratify the act of the master, was bad on general demurrer.

*Held*, also, that the non-delivery of the goods was not, under the above circumstances, occasioned by "perils of the seas," so as to be within the exception of the bills of lading.

Also, that a plea to a count on the bills of lading, stating the hypothecation of the ship, freight, and cargo for repairs, that a prudent owner would not have repaired, that the Master acted without authority and the owner never ratified his act, and that the ship and freight were of less value than the amount mentioned in the bottomry bond, whereby it was out of the power of the defendant to deliver the goods, was bad after verdict. *Benson v. Duncan*, 3 Exch. R. 644.

### CHARTER-PARTY.

1. *Construction of.*—*Condition precedent to accepting cargo.*—Assumpsit on the following charter-party:—"It is mutually agreed between E. O., agent for the owners of the 'Lydia,' new ship, now on the stocks, of the measurement of 1,100 tons, or thereabouts, now at Quebec, to be launched and ready to receive cargo in all May, guaranteed to sail in all June, and F. & Co. merchants, that the ship shall proceed to, &c., and there load a cargo of timber," &c.: *Held*, that the readiness to receive the cargo in all May was a condition precedent to the plaintiff's right to recover for not loading a full cargo; and that a plea stating that the ship was not ready to receive a cargo in all May was good on general demurrer. *Oliver v. Fielden*, 4 Exch. R. 135.

Cases cited in the judgment: *Glabholm v. Hays*, 2 M. & G. 257; *Ollive v. Booker*, 1 Exch. R. 416.

2. *Ballast.*—A shipowner is entitled to take merchandise for freight as ballast on board his chartered vessel, provided the merchandise occupies no more space than ballast would have done. *Twiss v. Henderson*, 4 Exch. R. 890.

# The Legal Observer,

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SATURDAY, JANUARY 29, 1853.  
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## COMMENTS ON THE NEW COMMON LAW RULES.

[Continued from p. 224.]

WE resume the consideration of the General Rules of the Common Law Courts, with the more immediate intention of directing attention to such as introduce any novelty in practice. The Rules new in form, but embodying what has heretofore been considered as established in practice, will be more conveniently deferred to a future Number.

### APPEARANCE FOR CO-DEFENDANTS.

The mode of appearance, by or on behalf of a defendant, to a writ of summons, is regulated by the Common Law Procedure Act, sect. 31, and does not differ from the form prescribed by the Uniformity of Process Act (2 Wm. 4, c. 39), except that when a defendant appears in person he must now give his address. It has been heretofore usual, when an attorney appeared for several co-defendants to make a separate memorandum for each defendant, but it is now directed by Rule 2, that,—

"If two or more defendants in the same action appear by the same attorney and at the same time, the names of all the defendants so appearing shall be inserted in one appearance."

### TIME TO DECLARE.

When the plaintiff was unprepared to declare during the Term after the defendant's appearance, and was desirous to prevent judgment of *non pros*, it was usual to obtain successive side-bar rules to declare, each of which extended the time for declaring for a month; but if the defendant was unwilling to let the delivery of a declaration be postponed, he might serve the plaintiff with what was called a "peremptory rule to declare," which in general obliged

the plaintiff to deliver a declaration within the time limited by the rule. The practice of obtaining rules to declare *as of course* is now abolished by Rule 7, which declares that—

"No side-bar rule for time to declare shall be granted."

We apprehend that it will still be competent for a plaintiff who has any good reason for delaying to deliver a declaration, to obtain a Judge's order, on summons, for time to declare, but such order will not be granted as of course.

### PARTICULARS OF DEMAND OR SET-OFF.

The Rule which rendered it in some sense obligatory upon a plaintiff to deliver "particulars of demand" in certain actions, is modified and adapted to the change in procedure introduced by the Act of 1852; and as regards the delivery of particulars, a defendant pleading a *set-off* is now, for the first time, placed upon a similar footing to a plaintiff declaring in assumpsit or in debt on simple contract; for, although a plaintiff might obtain a Judge's order for particulars of set-off, there was no rule making it incumbent on the defendant to deliver such particulars with his plea. The practice is now provided for by the following Rule, numbered 19:—

"With every declaration (unless the writ has been specially indorsed under the provisions contained in the 25th section of the Common Law Procedure Act, 1852), delivered or filed, containing causes of action such as those set forth in Schedule B. of that Act, and numbered from 1 to 14, inclusive, or of a like nature, the plaintiff shall deliver or file full particulars of his demand under such claim, where such particulars can be comprised within three folios; and where the same cannot be comprised within three folios, he shall deliver or file such a statement of the nature of his

claim, and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios; and with every plea of set-off containing claims of a similar nature as those in respect of which a plaintiff is required to deliver or file particulars, the defendant shall in like manner deliver particulars of his set-off. And to secure the delivery or filing of particulars in all such cases, it is ordered, that if any such declaration shall be delivered or filed, or any plea of set-off delivered without such particulars or such statement as aforesaid, and a Judge shall afterwards order a delivery of particulars, the plaintiff or defendant, as the case may be, shall not be allowed any costs in respect of any summons for the purpose of obtaining such order, or of the particulars he may afterwards deliver; and a copy of the particulars of the demand, and set-off, shall be annexed by the plaintiff's attorney to every record at the time it is entered with the proper officer."

To understand the application of the first part of this Rule, excepting from its operation cases in which the writ of summons has been specially indorsed, the reader is referred back to the section of the Procedure Act which authorises a plaintiff in actions for liquidated demands, to indorse on the writ the particulars of his claim in a form specified by the Act, and provides that such "indorsement shall be considered as particulars of demand, and no further or other particulars need be delivered, unless ordered by the Court or a Judge." In cases, however, where the plaintiff has not availed himself of the liberty given to indorse particulars on the writ, and which fall within the descriptions of action contained in Schedule B. to the Act (numbered from 1 to 14 inclusive), the plaintiff is required to deliver such a statement of the nature of his claim, and of the sum or balance due, as may be comprised within three folios. The causes of action numbered 1 to 14 in the Schedule of the Act 15 & 16 Vict. c. 76, as referred to in the Rule, comprehend actions for, goods sold, work and materials, moneys lent, paid, and received, upon an account stated for an estate sold, for the use of a house and land or fishery, for copyhold fines, for the hire of goods, and for freight and demurrage. In these various descriptions of action, unless particulars have been indorsed on the writ of summons, they should be delivered with the declaration. So where the set-off includes claims of a similar nature, the plea of set-off should be accompanied by the like particulars. If plaintiff or defendant omit to deliver particulars, in cases to which the rule is applicable, and a Judge afterwards orders the

delivery of such particulars, the party in default is to be allowed no costs in respect of the summons for such order, or the particulars delivered under it. As heretofore, it is the duty of the plaintiff's attorney to annex to the record a copy of the particulars of demand and set-off.

#### WARRANT OF ATTORNEY AND COGNOVIT.

By Statute 3 Geo. 4, c. 39, warrants of attorney and cognovits not filed within 21 days after execution are inoperative against the assignees of a trader who afterwards becomes bankrupt, and also by Stat. 1 & 2 Vict. c. 110, s. 60, against the assignees of insolvents. If the warrant of attorney or cognovit was not filed under the Statute, it has been the practice to file the one or the other before signing judgment. The practice is now embodied in Rule 25, which directs that:—

"No judgment shall be signed upon any cognovit or warrant of attorney, without such cognovit or warrant being delivered to and filed by the Master, who is hereby ordered to file the same in the order in which it is received."

The Rule which follows (R. 26) provides for a modification of the existing practice with respect to entering up judgments on warrants of attorney more than a year old. Leave to enter up judgment on a warrant of attorney above one and under ten years' old, could only be obtained by a motion in Term, or a Judge's order in Vacation; and, if ten years old or more, upon a rule to show cause. R. H. 2 W. 4, s. 73. The practice by motion and rule in such cases is now abolished, and it is declared that,—

"Leave to enter up judgment on a warrant of attorney above 1 and under 10 years old, is to be obtained by order of a Judge made *ex parte*, and if 10 years old or more, upon a summons to show cause."

When the warrant is under ten years' old, therefore, a Judge will make an order, upon a proper affidavit, without summons, and if the warrant was not given within ten years, the order may be obtained at Chambers either in Term or Vacation. An old rule of the 42 Geo. 3, directed, that the defeasance should be written on the same paper or parchment on which the warrant of attorney was written, and this is now more explicitly required by R. 27, which provides that,—

"Every attorney or other person who shall prepare any warrant of attorney to confess judgment, which is to be subject to any de-

feasance, shall cause such defeasance to be written on the same paper or parchment on which the warrant is written, or cause a memorandum in writing to be made on such warrant, containing the substance and effect of such defeasance."

This Rule, it will be observed, does not specify the consequence of disobedience to the direction contained in it, nor does it indicate whether a deviation from the prescribed form is to be regarded as affecting the validity of the instrument.

#### JUDGE'S ORDER FOR JUDGMENT.

As most of our readers are aware, the Bankrupt Law Consolidation Act (12 & 13 Vict. c. 106, s. 137), puts a Judge's order for judgment by consent, given by a trader defendant, upon the same footing as a warrant of attorney or cognovit, by directing that the order should be void, unless filed within 21 days. It has since been determined that this enactment is limited in its operation to assignees and creditors under a bankruptcy,<sup>1</sup> and that a Judge's order not filed within the provision does not thereby become void against a trader who is not bankrupt.<sup>2</sup> It had been usual, however, for the plaintiff's attorney to insert in his bill the costs of filing the Judge's order for judgment, but such practice is now regulated by R. 28, which provides that,—

"The costs for filing a Judge's order for judgment against a trader defendant under the Bankrupt Act, shall not be allowed unless specially ordered by the Judge."

#### TAKING MONEY OUT OF COURT.

The Common Law Procedure Act (s. 72) made a considerable change in the practice as to payment of money into and taking it out of Court. Under that section, no rule or Judge's order is necessary to authorise the payment, but the proper officer, upon taking the money, gives, as before, a receipt in the margin of the plea, and the section provides, that "the said sum shall be paid to the plaintiff, or to his attorney, upon a written authority from the plaintiff, on demand." Before the passing of this Act, the plaintiff's attorney gave a day's notice that he required the money, and upon producing the plea with the receipt, received a cheque from the Master for the amount. It is now indispensably necessary that the attorney should, in every case, produce a written authority from the client before receiving the sum paid in under a plea of

payment into Court, and as the officers at the Masters' Office could not be supposed to have any knowledge of the handwriting of the client, it was supposed that the plaintiff's handwriting must be verified by affidavit. Rule 11 of the new series seems to place this matter in the discretion of the Master, as it declares that,—

"No affidavit shall be necessary to verify the plaintiff's signature to the written authority to his attorney to take money out of Court, unless specially required by the Master."

In practice, it may be supposed that the affidavit will be dispensed with, unless the Master has some reason to suppose that the written authority is not genuine, or has not been properly obtained; but why it was necessary to establish any new practice in this matter is not very apparent. It is quite clear, that a personal reference to the client for his written authority, whenever money is paid in, will be attended with delay and inconvenience, and it is hardly to be presumed that the attorney would proceed in the action after the payment of money into Court, until he had ascertained that his client was not satisfied with the sum paid in.

It seems to have been forgotten, too, that the attorney has a lien for his costs upon the money paid into Court, and that neither Statute nor Rules provide any protection that the money paid in may not be received by the plaintiff, without the knowledge or consent of his attorney, and without any regard to his lien.

#### REMUNERATION OF ATTORNEYS AND SOLICITORS.

We mentioned, some time ago, that a New Scale of Attorneys' Costs was under the consideration of the Judges, assisted by the Masters of the several Common Law Courts. It will be satisfactory to the Practitioners to know that, under the directions of the Judges, the Masters sent the proposed Scale of allowances to the Council of the Incorporated Law Society, and that the Common Law Committee of that Society had several meetings and made various suggestions, many of which were adopted by the Masters as just and proper.

On the remaining points, a deputation attended three of the Judges, appointed by their brethren from each Court. A Master, also, from each Court attended.<sup>3</sup> The re-

<sup>1</sup> *Bryan v. Child*, 5 Exch. 368.

<sup>2</sup> *Farrow v. Massey*, Q. B. May, 1852.

<sup>3</sup> See the Scale of Costs, pp. 251-8, *post*.

sult, we trust, will be deemed right and just, as between the Suitor and the Attorney.

It is a very important step in the consideration of the changes which have been effected and are still in progress, that the Judges afford an opportunity to the representatives of the Attorneys and Solicitors to be heard on the effect of the proposed alterations in the practice and course of proceeding in the Courts.

On the subject of the costs in Equity, which are also under consideration at the Incorporated Law Society, it may not be inappropriate to quote the language of Lord Erskine's Order, in 1806, on the increase of the fees at that time :—

"That by the great alteration of the times and the heavy stamp duties and various taxes and other heavy charges and expenses of late years imposed—the present fees and rewards now allowed and taken by the solicitors of this Court, are greatly inadequate to the duties to be performed by them, and to the support and maintenance of the practisers of a *liberal Profession*. And it being for the benefit of the suitors that *skilful, attentive, and proper persons* should be encouraged in the due and faithful discharge of the business and employment of solicitors, entrusted to their care by the suitors, by a reasonable recompense and reward for their services; and a schedule of increased fees hereunder written, subscribed by the sworn clerks and waiting clerks (and who by virtue of their offices are also entitled to act as solicitors of the Court), having been submitted," &c., an order was made thereon.

The framers of scales of costs, both at Law and in Equity, should bear in mind that a large proportion of the business transacted in town comes from the Country, and is done through a London solicitor as agent, who has to defray all the payments to counsel and officers of the Court, besides the expenses of offices and clerks, and to divide the profit (if he can find any) between himself and the attorney in the country. The agent runs the risk of bad debts, of protracted payments, and the honesty of clerks. Then there is the interest of capital to be considered, and in the result, in many cases, the agency account shows a positive loss.

The end of all this cheapening of law will be, that it will not answer the purpose of an attorney of capital and integrity to follow that portion of his Profession, and consequently the business must fall into the hands of a lower class of attorneys. The public will then discover the value of cheap law. But if the suitor is to have cheap

law, cheapen it by reducing the fees of office, not by increasing them as has been lately done.

## REPEAL OF THE ANNUAL CERTIFICATE DUTY.

We understand that the Council of the Incorporated Law Society have presented a memorial to the new Chancellor of the Exchequer, stating concisely and forcibly the grounds on which the Attorneys, Solicitors, and Proctors claim relief from the unjust and unequal tax annually imposed on them. Lord Robert Grosvenor, also, has been solicited to arrange a meeting when the Finance Minister may be attended on the subject by a deputation from the Law Society, headed by Lord R. Grosvenor and other members of Parliament favourable to the remission of the tax.

It may happen, as heretofore, that no more than a civil promise may be given to take the subject into careful consideration; but, at all events, the interview will be useful in "affecting the Government with notice" of the intention strenuously to renew the application; and it may, perhaps, be ascertained, in some degree, what is the feeling of the Treasury on the subject. If it be intended altogether to exclude the repeal of the tax from the Budget, the Profession will know what to do, and the sooner they prepare for the conflict the better.

Notice has already been given by the noble Member for Middlesex to bring in the Bill on an early day after the present recess. The proposed meeting in Downing Street may, perhaps, not take place till nearly the time of re-assembling of Parliament, as but few members are yet in London. The subject, however, has already been urgently brought to the notice of the Chancellor of the Exchequer in full time to take it into his consideration in reference to the details of his Budget.

## NEW ORDER OF THE COURT OF CHANCERY.

January 10, 1853.

WHEREAS the Right Honourable Sir George James Turner, Knight, hath resigned his office of Vice-Chancellor of the Court of Chancery: And whereas the Honourable Sir William Page Wood, Knight, hath been appointed by her Majesty Vice-Chancellor of the said Court of Chancery: And whereas it is necessary to make provision for the hearing of the causes and matters which, at the time of such resign-

nation, were attached to the Court of the said late Vice-Chancellor: Now I do hereby order,

1. That every cause and matter, which, at the time of the said resignation, was attached to the Court of the late Vice-Chancellor Sir George James Turner, be transferred to the Court of the Vice-Chancellor Sir William Page Wood; and every such cause and matter is henceforth attached to the Court of the said Vice-Chancellor Sir William Page Wood, unless removed therefrom by any special order to be made by the Lord Chancellor or the Lords Justices of Appeal.

2. That all pleas, demurrers, causes, claims, re-hearings, further directions, exceptions, and petitions, now standing for hearing in the paper of the late Vice-Chancellor Sir George James Turner, be transferred to the paper of the Vice-Chancellor Sir William Page Wood, unless removed therefrom by any special order, to be made by the Lord Chancellor or the Lords Justices of Appeal.

3. That all motions, petitions, and further proceedings in causes and matters, to which the foregoing Orders refer, shall (subject to the provisions of the 15th of the General Orders of the 5th May, 1837) be heard before the Judges to whose Court the same are, under the provisions of these Orders respectively attached, unless removed therefrom by any special order of the Lord Chancellor or the Lords Justices of Appeal.

(Signed) CRANWORTH, C.

## RULES OF THE COURTS OF QUEEN'S BENCH, COMMON PLEAS, AND EXCHEQUER.

*Hilary Term, 1853.*

- I. EXAMINATION, ADMISSION, AND RE-ADMISSION OF ATTORNEYS.
  - II. REGULATIONS FOR CONDUCTING THE EXAMINATION.
  - III. TAKING OUT AND RENEWAL OF ATTORNEYS' CERTIFICATES.
- I. EXAMINATION, ADMISSION, AND RE-ADMISSION OF ATTORNEYS.

WHEREAS, by section 15 of the Statute 6 & 7 Vict. c. 73, it was enacted, "That it shall be lawful for the Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, or any one or more of them, and he or they is and are hereby authorised and required before he or they shall issue a fiat for the admission of any person to be an attorney, to examine and inquire, by such ways and means as he or they shall think proper, touching the articles and service, and the fitness and capacity of such person to act as an attorney; and if the Judge or Judges as aforesaid shall be satisfied by such examination, or by the certificate of such Examiners as hereinafter-mentioned, that such person is duly qualified, and fit and competent to act as an attorney, then, and not otherwise, the said Judge or Judges shall, and he or they is and

are hereby authorised and required to administer, or cause to be administered, to such person the oath hereinafter directed to be taken by attorneys and solicitors, in addition to the oath of allegiance, and after such oaths taken to cause him to be admitted an attorney of such Court," and by section 16 of the said statute, it was further enacted "For the purpose of facilitating the inquiry touching the due service under articles as aforesaid, and the fitness and capacity of any person to act as an attorney, that it shall be lawful for the Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, (or any eight or more of them, of whom the Chiefs of the said Courts shall be three), from time to time, to nominate and appoint such persons to be Examiners for the purposes aforesaid, and to make such Rules and Regulations for conducting such examination as such Judges shall think proper:" And whereas, in order to carry the said Statute more fully into effect, it is expedient annually to appoint Examiners, subject to the control of the Judges in manner hereinafter-mentioned:

And whereas, pursuant to the said Statute, certain Rules, Orders, and Regulations were made by the Judges of the said Courts in Easter Term, 1846, and other Rules, Orders, and Regulations of the said Courts, or one of them, have been from time to time previously made, relating to the examination, admission, and re-admission of attorneys, and their annual certificates. And whereas it is expedient to consolidate and amend the said Rules, Orders, and Regulations in manner hereinafter mentioned.

It is therefore ordered, that from and after the first day of Trinity Term next, all Rules, Orders, and Regulations relating to the examination, admission, and re-admission of attorneys, and the taking out and renewal of their annual certificates, be, and they are hereby annulled: Provided that all notices, appointments, and other steps and proceedings duly made, had, or taken under and by virtue of the Rules, Orders, or Regulations, or any of them, hereby to be annulled, shall be valid, and may be carried into effect, anything herein to the contrary notwithstanding. And it is ordered that the following Rules, Orders, and Regulations shall, from and after the said first day of Trinity Term next, be substituted in lieu of all such former Rules, Orders, and Regulations whatsoever.<sup>1</sup>

1. The several Masters for the time being for the Courts of Queen's Bench, Common Pleas, and Exchequer, respectively, together with 16 attorneys or solicitors, be appointed by a Rule of Court in every year, to be Examiners for one year, any five of whom (one whereof to be one of the said Masters), shall be competent to conduct the examination; and that subject to such appeal as hereinafter-mentioned, no person who shall not have been

<sup>1</sup> The passages in *Italics* comprise the amendments and additions made to the Rules of Easter Term, 1846.

previously admitted a solicitor of the High Court of Chancery shall be admitted to be sworn an attorney of any of the Courts, except on production of a certificate signed by the major part of such Examiners actually present at and conducting his examination testifying his fitness and capacity to act as an attorney, *and in the usual business transacted by an attorney*; such certificate to be in force only to the end of the Term next but one following the date thereof, unless such time shall be specially extended by the order of a Judge.

2. The Examiners so to be appointed shall conduct the said examination under regulations to be first submitted to and approved by the Judges.

3. In case any person shall be dissatisfied with the refusal of the Examiners to grant such certificate, he shall be at liberty *within one month*, to apply for admission by petition in writing to the Judges, to be delivered to the clerk of the Lord Chief Justice of the Court of Queen's Bench, upon which no fee or gratuity shall be received, which application shall be heard in Serjeants' Inn Hall by not less than three of the Judges.

4. And whereas the hall or building of the Incorporated Law Society of the United Kingdom, in Chancery Lane, is a fit and convenient place for holding the said examinations, and the said Society have consented to allow the same to be used for that purpose: it is further ordered, that until further order, such examinations be there held on such days as the said Examiners, or any five of them, shall appoint; and that any person not previously admitted an attorney of any of the three Courts, and desirous of being admitted, shall give notice to the said Examiners, *before the commencement of the Term next preceding that in which he shall propose to be examined*, of his intention to apply for examination, by leaving the same with the Secretary of the said Society at their said Hall; which notice shall also state his place or places of residence or service for the last preceding twelve months; and in case of application to be admitted on a refusal of the certificate, shall give 10 days' notice, to be served in like manner, of the day appointed for hearing the same.

5. Three days, at the least, before the commencement of the Term next preceding that in which any person not before admitted, shall propose to be admitted an attorney of either of the Courts, he shall cause to be delivered at the Masters' Office a written notice, which shall state his place or places of abode or service for the last preceding twelve months, *and the name and place of abode of the attorney or attorneys to whom he was article and assigned, if any such assignment has been made*; and the Master shall reduce all such notices as in this rule first mentioned into an alphabetical table or tables, under convenient heads, and affix the same on the first day of Term, in some conspicuous place within or near to and on the outside of each Court. And such person shall also, for the space of one full Term previous to the Term in which he

shall apply to be admitted, enter or cause to be entered in two books kept for that purpose, one at the Chambers of the Lord Chief Justice or Chief Baron of the Court in which he applies to be admitted, and the other at the Chambers of the other Judges or Barons of such Court, his name and place or places of abode, and also the name or names, and place or places of abode of the attorney or attorneys to whom he shall have been article and assigned, *if any such assignment has been made*.

6. Every person so proposing to be admitted an attorney of either of the said Courts, who shall have given such notices of his intention to apply for examination and admission as aforesaid, or as authorised by this rule, and who shall not have attended to be examined or not have passed the examination, or not have been admitted, may, *within one week after the end of the Term for which such notices were given*, renew the notices for examination or admission for the then next ensuing Term, and so from time to time as often as he shall think proper. And that all such renewed notices shall be added to the list of notices of admission and re-admission, and placed up on the first day of the Term in the said Courts, chambers, and offices. And the applicants named in such renewed notices may be examined in the ordinary way in pursuance of such last-mentioned notices, but shall not be admitted until the last day of the Term, unless otherwise ordered by one of the said Courts, or a Judge thereof.

7. On an application to RE-ADMIT an attorney who has been struck off the Rolls, the applicant shall, before the commencement of the Term next preceding that in which he intends to apply to be re-admitted, give notice thereof as in the case of an original admission, and the affidavits in support of such application shall be filed at the office of the Master, and a copy thereof left at the Chambers of the Lord Chief Justice of the Court of Queen's Bench, before the Term, on the last day of which the motion for re-admission is intended to be made; and the rule for such re-admission shall be drawn up on reading such affidavit and an affidavit of such copy having been left and notices given in compliance with this rule.

8. A printed copy of the List of Admissions and Re-admissions shall be stuck up in the Queen's Bench, Common Pleas, and Eschequer Offices, and at the Judges' Hall or Chambers of each Court in Rolls' Garden.

## II. REGULATIONS

*Approved by the Judges for the Examination of Persons applying to be admitted as Attorneys of the Courts of Queen's Bench, Common Pleas, or Eschequer.*

1. Every person applying to be admitted an attorney of any of the said Courts pursuant to the said rules shall, within the first seven days of the Term in which he is desirous of being admitted, leave, or cause to be left with the Secretary of the said Incorporated Law Society his articles of clerkship duly stamped, and also any assignment which may have been

made thereof, together with answers to the several questions hereunto annexed, signed by the applicant and also by the attorney or attorneys, *London agent, barrister, or special pleader* with whom he shall have served his clerkship.

2. In case the applicant shall show sufficient cause, to the satisfaction of the Examiners, why the first regulation cannot be fully complied with, it shall be in the power of the said Examiners upon sufficient proof being given of the same, to dispense with any part of the first regulation that they may think fit and reasonable.

3. Every person applying for admission shall also, if required, sign and leave, or cause to be left with the Secretary of the said Society, answers in writing to such other written or printed questions as shall be proposed by the said Examiners, touching his said service and conduct, and shall also, if required, attend the said Examiners personally, for the purpose of giving further explanations touching the same, and shall also, if required, procure the attorney or attorneys with whom he shall have served his clerkship as aforesaid to answer either personally or in writing any questions touching such service or conduct, or shall make proof to the satisfaction of the said Examiners of his inability to procure the same.

4. Every person so applying shall also attend the said Examiners at the Hall of the said Society, at such time or times as shall be appointed for that purpose, pursuant to the said rule, as the said Examiners shall appoint, and shall answer such questions as the said Examiners shall then and there put to him by written or printed papers, touching his fitness and capacity to act as an attorney and in the usual business transacted by an attorney.

5. Upon compliance with the aforesaid regulations, and if the major part of the said Examiners actually present at and conducting the said examination (one of them being one of the said Masters), shall be satisfied as to the fitness and capacity of the person so applying to act as an attorney, the said Examiners so present, or the major part of them, shall certify the same under their hands in the following form, viz. :—

In pursuance of the rules made in Hilary Term, 1853, of the Courts of Queen's Bench, Common Pleas, and Exchequer, we being the major part of the Examiners actually present at and conducting the examination of *A. B.*, of, &c., do hereby certify that we have examined the said *A. B.* as required by the said rules: And we do testify that the said *A. B.* is fit and capable to act as an attorney of the said Courts, and in the usual business transacted by attorneys.

#### QUESTIONS AS TO DUE SERVICE OF ARTICLES OF CLERKSHIP.

To be answered by the Clerk.

I. What was your age at the date of your articles?

II. Have you served the whole term of your

articles at the office where the attorney or attorneys to whom you were articulated or assigned carried on his or their business? and if not, state the reason.

III. Have you at any time during the term of your articles been absent without the permission of the attorney or attorneys to whom you were articulated or assigned? and if so, state the length and occasions of such absence.

IV. Have you during the period of your articles been engaged or concerned in any profession, business, or employment, other than your professional employment as clerk to the attorney or attorneys to whom you were articulated or assigned?

V. Have you since the expiration of your articles been engaged or concerned, and for how long time, in any and what profession, trade, business, or employment, other than the profession of an attorney or solicitor?

*Questions to be answered by the Attorney, Agent, Barrister, or Special Pleader, with whom the Clerk may have served any part of the time under his Articles.*

I. Has *A. B.* served the whole term of his articles at the office where you carry on your business? and if not, state the reason.

II. Has the said *A. B.*, at any time during the term of his articles, been absent without your permission? and if so, state the length and occasions of such absence.

III. Has the said *A. B.*, during the period of his articles, been engaged or concerned in any profession, business, or employment other than his professional employment as your articulated clerk?

IV. Has the said *A. B.*, during the whole term of his clerkship, with the exceptions above-mentioned, been faithfully and diligently employed in your professional business of an attorney or solicitor?

V. Has the said *A. B.*, since the expiration of his articles been engaged or concerned, and for how long time, in any and what profession, trade, business, or employment, other than the profession of an attorney or solicitor?

And I do hereby certify that the said *A. B.* hath duly and faithfully served under the articles of clerkship (or assignment as the case may be), bearing date, &c. for the term therein expressed, and that he is a fit and proper person to be admitted an attorney.

#### III. TAKING OUT AND RENEWAL OF ATTORNEYS' CERTIFICATES.

Whereas by section 25 of the Statute 6 & 7 Vict. c. 73, it was enacted, That "if any attorney shall neglect to procure an annual stamped certificate, authorising him to practise as such within the time by Law appointed for that purpose, then and in such case the Registrar of Attorneys and Solicitors shall not afterwards grant a certificate to such attorney without the order of one of the Courts of Queen's Bench, Common Pleas, or Exchequer, or of one of the Judges thereof, to issue such certificate."



And whereas it is expedient that upon the application of an attorney having neglected for the space of one whole year to procure or renew an annual stamped certificate, the Judge shall have means of inquiring as to the circumstances under which he has omitted to commence or has discontinued to practise, and as to his conduct or employment during the term of such omission or discontinuance:

1. It is ordered, That from and after the first day of Trinity Term next, every person who shall intend to apply on the last day of Term or in Vacation for such order shall three days at least previous to the first day of the Term, on the last day of which application is intended to be made, or, in case the application is to be made in the Vacation, shall previous to the first day of the preceding Term, leave at the office of the Master of the Court in which he intends to make the application a notice in writing, containing his name and place of abode for the last preceding 12 months. And that before the said first day of Term he shall enter or cause to be entered a like notice in two books kept for that purpose, one at the Chambers of the Lord Chief Justice or Chief Baron, and the other at the Chambers of the other Judges or Barons, and shall before the said first day of Term, cause to be filed the affidavit upon which he seeks to obtain or renew his said certificate at the office of the Masters aforesaid, and a copy thereof to be also left at the Chambers of the Lord Chief Justice of the Court of Queen's Bench.

2. The Masters shall reduce such notices into alphabetical order, and add the same to the list of admissions and re-admissions, and the order for the granting the certificate shall be drawn up on reading such affidavit of such copy having been left in compliance with this rule.

3. Upon an application to dispense with the usual notice and to take out or renew the certificate of an attorney as aforesaid, a summons shall be served on the Registrar of Attorneys, calling on him to show cause within 10 days why such certificate should not be issued, and if no cause be shown to the satisfaction of the Judge, an order may be made for issuing such certificate if the Judge should think proper.

[Signed by the Judges, 20th Jan., 1853.]

## QUESTIONS AT THE EXAMINATION.

*Hilary Term, 1853.*

### I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. Is a civil action maintainable in any case in which the cause of action constitutes an indictable offence?

6. When are specialty and simple contract debts respectively barred by the Statute of Limitations, if no proceedings have been taken to prevent that Statute from operating?

7. When the Statute of Limitations is, in point of time, a bar to the recovery of such debts, state some of the most usual requisites to be proved, to take such debts out of the operation of the Statute, and will a verbal promise to pay be sufficient?

8. Is it necessary in any, and what, cases, previous to commencing an action, to give notice in writing to the opposite party of the cause of action and claim for damages? And if any notice is necessary, what would be the consequence of the plaintiff failing, upon the trial, to prove the giving such notice?

9. Is there any, and if any, what, difference between the liability of bail above, i.e., bail to the action, and bail on a writ of error?

10. Where an executor is sued for a debt owing by his testator, and pleads *plene administravit* only, and the plaintiff cannot disprove that plea, but there is other personal estate of the testator to be got in, what course should the plaintiff take?

11. A. commits an assault upon B.; B. dies before action brought: Can B.'s executors sue A. for the recovery of damages in respect of the assault committed by A.?

12. If a plaintiff recover a verdict against two joint defendants, should he issue execution against each defendant for half? or if he issue execution against one for the whole, would the other be thereby exonerated entirely?

13. In an action on a bill of exchange, Drawer v. Acceptor, and the defendant pleads payment only, has the plaintiff anything, and what, to prove?

14. Can a plaintiff be compelled upon a trial to be nonsuited against his will; and if he cannot, what should he do to prevent it? And in what respect is a plaintiff's position better by a nonsuit than by a verdict against him?

15. State some of the most usual grounds upon which new trials are granted, and when generally upon payment of costs, and when without costs.

16. When the rule granting a new trial is silent as to costs, and the verdict on the second trial is the same as on the first, how are the costs of the first trial and of the motion for the new trial disposed of?

17. What are the means of enforcing an award where there is no cause pending, and the submission contains no clause for making it a rule of Court?

18. What is the effect of withdrawing a juror on a trial as to costs? and can the plaintiff bring another action for the same cause?

19. After what period does a deed prove itself, without calling the attesting witnesses?

### III. CONVEYANCING.

20. What is an estate in tail? and by what words is it created; and what words constitute an entail general, and what an entail special?

21. What power of disposition has a tenant in tail over entailed lands, both as regards his own estate tail, and all remainders over? and distinguish the case where there is a protector of the settlement from the case in which there is no such protector?

22. What is a copyhold or customary estate, and by what description of assurance is it created, and afterwards passed from one party to another?

23. How can the dower of a woman married before the late Dower Act came into operation, be now defeated? and how can the dower of a woman, married subsequent to that Act, be defeated?

24. Will a covenant for production of title deeds in any, and what, cases run with the land?

25. What are the general rules as to the descent of freehold lands of inheritance?

26. By what means are the respective species of property usually conveyed or transferred?

27. What are the proper modes of mortgaging freehold, copyhold, and leasehold estates? State each severally.

28. A. is mortgagee in fee, and dies without devising the security, and the mortgage debt is applicable by his executor to the payment of the testator's debts; suppose the heir-at-law of the mortgagee to be unwilling or incapable to re-convey the premises, to whom is the mortgagor to pay the principal money and interest, and how is he to obtain an effectual re-conveyance of those premises?

29. Is a lessee under the usual covenants to repair, liable to rebuild in case of fire?

30. State some of the principal points in which the law relating to Wills was altered by a late Statute.

31. If a person die intestate, how is his personal estate distributed?

32. What covenants is it usual for trustees or mortgagees to enter into?

33. Can the printed particular and conditions of sale of an estate by auction, be varied by parol at the sale?

34. What interest and power does the husband take in and over the following property of the wife:—her freehold estates, her personalty in possession, her chattels real, her choses in action? and what effect has the death of husband and wife, or wife, on this interest?

### IV. EQUITY, AND PRACTICE OF THE COURTS.

35. State the nature of an equity of redemption, and give a general description of the parties entitled to it.

36. Describe "tacking," and in what cases it applies.

37. What is the distinction between legal and equitable assets, and in what order are each applicable to the payment of debts?

38. Can a married woman bind herself by contract in Equity in any, and what, case?

39. State the measures to be adopted by an executor or administrator in order to relieve himself from liability for debts due from the estate, of which he has no knowledge at the time when he is about to transfer the residue of the estate to the parties entitled.

40. If a creditor has omitted to take the necessary proceedings for recovering his debt from an executor or administrator who has relieved himself from the liability, can such creditor recover his debt, and from whom?

41. Is a mortgagee who has taken possession of the mortgage estate liable to account for any, and what, sums of money beyond those which he has actually received out of the estate?

42. State the general purposes for which a mortgagee in possession may expend money upon the mortgaged estate which will be allowed to him by a Court of Equity in taking the account between mortgagor and mortgagee.

43. State the proceedings to be adopted under the Act of last Session, 15 & 16 Vict. c. 86, by a creditor seeking the assistance of a Court of Equity to obtain payment of his debt, or by a legatee seeking to obtain payment of his legacy, out of personal estate.

44. State the alteration made by the Act of last Session in cases where parties seek equitable relief under a legal title or right which has not been established at law.

45. State the course to be adopted under the Act of last Session in cases where a suit becomes abated by death or marriage of parties, or defective by reason of any change or transmission of interest.

46. State the course of the present practice to compel appearance and answer, and the proceeding to be taken in case of default.

47. State the mode by which a defendant can, under the Act of last Session, obtain discovery from the plaintiff, and how such discovery was obtained under the former practice of the Court.

48. State the modes in which, under the Act of last Session, evidence may be taken in suits commenced by bill, and what option is reserved to the parties in this respect.

49. What alteration was made by the Act of last Session in the remedy given in suits for foreclosure?

### V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. What proceedings must be taken to obtain an adjudication in bankruptcy?

51. What facts must be proved to entitle the petitioning creditor to an adjudication?

52. Has the bankrupt any, and what time to dispute the adjudication, and how must he proceed for that purpose?

53. State the extent of the jurisdiction of the Court of Bankruptcy in London.

54. How are the creditors to prove their debts before the Commissioners?

55. What property held by the bankrupt

passes to the assignees, and are there any, and what, exceptions?

56. Suppose a creditor to possess some security for his debt, but which he deems to be insufficient, what steps must he take to enable him to receive a dividend on the balance?

57. What should be done by the holders of bills of exchange, not due at the time of the bankruptcy?

58. What is the rule in bankruptcy as to debts barred by the Statute of Limitations?

59. Is any priority given to any, and what, debts?

60. Is a settlement made by a trader in favour of his wife, before his bankruptcy, valid, in any, and what, circumstances?

61. What is the Law with respect to Partnerships where one only of several members of a firm becomes bankrupt?

62. What are the rights of assignees, either to retain or relinquish property of the bankrupt held on lease?

63. Where a bankrupt has entered into a contract relating to land or buildings, which the assignees consider not to be beneficial to the creditors, what course may they pursue?

64. State the practice under the last Act as to the bankrupt's certificate.

#### VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. What are the ordinary steps taken in prosecuting a criminal charge up to the trial of the party charged?

66. Under what circumstances may depositions taken before the magistrates be used in evidence on the trial of the party accused?

67. What is the principle upon which a party charged with a criminal offence may be admitted to bail; and will a party charged with murder be admitted to bail?

68. According to the law as it now stands, what are the variances between the evidence and the statements in the indictment which may be amended at the trial, and subject to what restrictions or limitations?

69. If upon the trial of a person charged with a felony, it is found that he only attempted to commit the felony but did not succeed, what will be the result?

70. If a party be charged only with the attempt to commit such offences as those referred to in the last question as a misdemeanour, and the offence is proved to amount to felony, what is the course to be pursued?

71. In cases where it is doubtful whether the facts to be proved against the prisoner amount to an actual larceny, or to the receiving of goods, knowing them to be stolen, what is the course to be pursued?

72. Define the offence of embezzlement, and state how many acts of embezzlement may be charged in one indictment, and within what period of each other the acts so charged must have occurred.

73. Define the respective offences of forgery and uttering forged documents, and state

whether either or both of these offences may be tried at Quarter Sessions.

74. State the course of proceedings in bringing error in criminal cases, and in what cases the plaintiff in error is entitled to be admitted to bail.

75. What is the principle upon which the rateable value of property assessed to the poor-rate is ascertained?

76. Enumerate the various modes by which, under the law as it now stands, a settlement may be obtained.

77. State what provisions have been recently made to prevent the removal of paupers in certain cases, and how far the same affect the question of settlement.

78. Upon whom is the liability to repair highways cast by the Common Law? How may this liability be altered by custom, prescription, or otherwise?

79. What is the nature of a criminal information? What is the course of proceeding to be taken for obtaining a criminal information? In whose name, and in what Court, must it be filed, and what are the essential requisites for obtaining it?

#### PROFESSIONAL LISTS.

##### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 21st Dec., 1852, to 21st Jan., 1853, both inclusive, with dates when gazetted.*

Brooks, James Willis, and Charles James Whalley, 4, Gray's Inn Square, Attorneys and Solicitors. Jan. 14.

Chapman, Gardiner, and Henry Hansell, Norwich, Attorneys and Solicitors. Jan. 14.

Cooper, Thomas, and Bartholomew Howlett, Congleton, Attorneys, Solicitors, and Conveyancers. Jan. 11.

Curtler, John, and Thomas Holyoake, Droitwich, Attorneys and Solicitors. Jan. 7.

Griffiths, Edward Love, and Frederick Blake, Newport and Cowes, Isle of Wight, Attorneys, Solicitors, and Conveyancers. Jan. 11.

Hadfield, George, Samuel Hadfield, and George Hadfield, jun., 24, Fountain Street, Manchester, Conveyancers, Attorneys, and Solicitors, so far as regards the said George Hadfield. Jan. 4.

Jones, William, George Blaxland, and William Halse Gatty Jones, Crosby Square, City, Attorneys and Solicitors, so far as regards the said William Halse Gatty Jones. Jan. 4.

Sudlow, John James Joseph, jun., and Alfred Valentine Gunnell, 18, Great George Street, Westminster, Parliamentary Agents. Jan. 14.

Thompson, Joseph, and John Clegg, Bradford, Yorkshire, Attorneys and Solicitors. Jan. 7.

Tribe, William, and William Foard Tribe, Worthing, Attorneys and Solicitors. Jan. 4.

**DIRECTIONS TO THE MASTERS OF  
THE COMMON LAW COURTS.**

**IN LIEU OF DIRECTIONS NOW IN FORCE.**

1. BETWEEN the 1st day of September and the 24th day of October in each year, one of the Masters of the Courts of Queen's Bench, Common Pleas, or Exchequer, shall have authority to tax Bills of Costs, take references, and perform other necessary and immediate matters arising in or appertaining to any or either of the said Courts at the office of his own Court; and for such purpose one of the Masters shall attend on certain days in each week, as may be found necessary, and of which due notice shall be affixed in the Judges' chambers, and in the respective offices of the Masters of each Court; and such Master shall be considered as the Vacation Master.

2. In order to diminish as much as possible the costs arising from the copying of documents to accompany the briefs of counsel, the Masters are to allow only the copying of such documents, or such parts of documents, as they may consider necessary for the instruction of counsel, or for use at the trial.

3. No fee to counsel to be allowed on writs of trial, except on trials before the Judge of the Sheriffs' Court of London, or of other Courts of Record where attorneys are not allowed to practise, and then one guinea only.

4. The Masters shall have discretion in all cases to allow as between party and party the fees of counsel or special pleader for drawing pleadings or other proceedings, whether special or otherwise, and advising.

5. When judgment is signed on a cognovit, or on a Judge's order, authorizing the plaintiff to sign judgment, no declaration to ground judgment shall be necessary or allowed on the taxation of costs.

6. The costs of attendance by counsel or special pleader before a Judge at chambers shall in no case be allowed as between party and party, unless the Judge shall certify for such allowance.

7. In all actions on contract, other than

cases wherein by reason of the nature of the action no writ of trial can by law be issued, where the sum recovered or paid into Court, and accepted by the plaintiff in satisfaction of his demand, or agreed to be paid on the settlement of the action, shall not exceed twenty pounds (without costs), the plaintiff's costs as against the defendant shall be taxed according to the lower scale of allowances in the Schedule of Costs hereto annexed. Provided, that in case of trial before a Judge of one of the superior Courts, or Judge of assize, if the Judge shall certify on the postea that the cause was proper to be tried before him, and not before a Sheriff or Judge of an inferior Court, the costs shall be taxed on the higher scale.

8. Where in like actions the sum endorsed on the summons shall be more than twenty pounds, but the plaintiff fails to recover more than that sum, and the Judge does not certify as aforesaid, the plaintiff's costs against the defendant, whether between party and party or as between attorney and client, shall be taxed as upon a writ of trial before a Judge of a Court of Record where attorneys are not allowed to act as advocates, as hereinafter provided for, but the defendant's costs, if any, are to be taxed upon the higher scale; provided, that in cases triable before the Sheriff or Judge of an inferior Court, where the Judge shall refuse to make an order for such trial, the Judge may, if he shall think fit, direct at the time of such refusal on what scale the costs of each party shall be taxed, and in default of such direction the costs of both parties shall be taxed on the higher scale.

9. At the head of every bill of costs taken to the taxing officer to be taxed, it shall be stated whether the sum recovered, accepted, or agreed to be paid exceeds the sum of twenty pounds, or not, in the following form:

Debt above twenty pounds.

Debt twenty pounds or under.

## GENERAL ALLOWANCE FOR PLAINTIFFS AND DEFENDANTS;

AND IN

CASES UNDER £20 AS WELL BETWEEN ATTORNEY AND CLIENT AS  
BETWEEN PARTY AND PARTY.

WRITS.	Above £20.			Under £20.			Above £20.			Under £20.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Summons . . . . .	0	12	6	0	10	0	0	13	6	—	—	—
Concurrent summons . . . . .	0	10	0	0	7	6	0	11	0	—	—	—
Renewed summons . . . . .	0	10	0	0	7	6	—	—	—	—	—	—
Capias . . . . .	0	12	6	—	—	—	—	—	—	—	—	—
Alias . . . . .	0	10	0	—	—	—	—	—	—	—	—	—
Pluries . . . . .	0	10	0	—	—	—	—	—	—	—	—	—
Capias ad satisfaciendum . . . . .	0	12	0	0	11	0	—	—	—	—	—	—
Renewed ca. sa. . . . .	0	9	6	0	8	6	—	—	—	—	—	—
Ca. sa. for the residue . . . . .	0	14	0	0	13	0	—	—	—	—	—	—
Renewed . . . . .	0	11	6	0	10	6	—	—	—	—	—	—
Fieri facias . . . . .	0	12	0	0	11	0	—	—	—	—	—	—
Renewed . . . . .	0	9	6	0	8	6	—	—	—	—	—	—
Renewed for the residue . . . . .	0	14	0	0	13	0	—	—	—	—	—	—
Renewed . . . . .	0	11	6	0	10	6	—	—	—	—	—	—
Fi. fa. de bonis ecclesiasticis . . . . .	0	14	6	—	—	—	—	—	—	—	—	—
Renewed . . . . .	0	12	0	—	—	—	—	—	—	—	—	—
Habere facias pos. and fi. fa. or Ca. sa. for costs in one writ . . . . .	0	18	0	—	—	—	—	—	—	—	—	—
Habere fa. pos. alone . . . . .	0	15	0	—	—	—	—	—	—	—	—	—
Special indorsements on writs of summons . . . . .	0	5	0	0	2	6	—	—	—	—	—	—
Writ of revivor . . . . .	0	12	6	0	10	0	—	—	—	—	—	—
Ejectment . . . . .	0	15	0	—	—	—	—	—	—	—	—	—
Of trial, exclusive of fee . . . . .	—	—	—	0	8	0	—	—	—	—	—	—
Subpoena ad test. . . . .	0	7	0	0	5	0	—	—	—	—	—	—
Subpoena duces tecum . . . . .	0	9	0	0	7	0	—	—	—	—	—	—
If above four folios, additional per folio . . . . .	0	0	8	0	0	4	—	—	—	—	—	—
Exigi facias . . . . .	1	1	0	—	—	—	—	—	—	—	—	—
Capias utlagatum . . . . .	1	1	0	—	—	—	—	—	—	—	—	—
Elegit, Nos. 9, 10, and 11, in New Rules . . . . .	0	15	0	—	—	—	—	—	—	—	—	—
Ditto, Nos. 12, 13, and 14 . . . . .	1	0	0	—	—	—	—	—	—	—	—	—
Attachment . . . . .	0	12	0	—	—	—	—	—	—	—	—	—
Detainer . . . . .	0	12	6	—	—	—	—	—	—	—	—	—
Habeas corpus obtained by plaintiff, including allowance . . . . .	1	0	0	—	—	—	—	—	—	—	—	—
Procedendo . . . . .	0	15	0	—	—	—	—	—	—	—	—	—
Venditioni exponas . . . . .	0	13	6	—	—	—	—	—	—	—	—	—
Supersedeas, if not issued by a prisoner . . . . .	0	11	0	—	—	—	—	—	—	—	—	—

## COPY AND SERVICE OF WRITS.

Of summons, the defendant being served in London, Middlesex, or Surrey, within two miles of the place of business of the attorney, for each defendant . . . . . 0 5 0 0 5 0

If beyond that distance, additional for every mile, but in cases under 20 $\frac{1}{2}$  not to exceed 10 miles . . . . . 0 1 0 0 0 6

If the defendant should be served in any other county, the same allowance, but the distance to be calculated from the office of the attorney employed to effect service .

Of writ of revivor, the same as summons .

Of writ of ejectment, the same as of writ of summons for each defendant . . . . . 0 0 4 —

And in addition, for every folio of copy beyond three . . . . . }

Correspondent's charges for service of writ, including affidavit of service, and exclusive of mileage in cases in which the fixed sum for costs does not apply . . . . . 0 18 0 0 12 0

The like for service of subpoenas . . . . . 0 8 6 0 5 0

Extra for subpoenas duces tecum . . . . . 0 2 0 0 2 0

Notice of writ for service on a foreigner out of jurisdiction . . . . . 0 3 0 0 3 0

	Above £20.			Under £20.				Above £20.			Under £20.		
	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.
Agents' charges according to circumstances, &c.							One or more pleas, if three folios or under, exclusive of instructions, but inclusive of ingrossing	0	4	0	0	3	0
In cases in which the defendant shall avoid service, and an order shall be made to proceed, a sum will be allowed for attendances to serve according to circumstances							If above three folios, for every folio drawing	0	1	0	0	1	0
Of subpoena ad test	0	5	0	0	3	0	Joinder of issue, inclusive of ingrossing	0	4	0	0	3	0
Of subpoena duces tecum	0	7	0	0	5	0	Demurrer, inclusive of ingrossing	0	4	0	0	3	0
Mileage as before.							Joinder in demurrer, inclusive of ingrossing	0	4	0	0	3	0

INSTRUCTIONS.

Instructions to sue or defend, for pleadings, special affidavits where allowed, and to counsel on special matters	0	6	8	0	3	4	Replications, new assignments, grounds of error, assignment of errors, pleas to assignment of errors, and other pleadings, the same as the foregoing charges for pleas.						
To counsel in common matters	0	3	4	0	3	4	Issue or demurrer book	0	6	8	0	3	4
For brief	0	13	4	0	6	8	Record	Nil.		Nil.			
If difficult, and many witnesses or documents, discretionary	—				Nil.		Postea, when drawn by attorney, including engrossing, for every folio	0	1	0	0	1	0
For every suggestion	0	6	8	0	3	4	Judgment, whether by default or final	0	3	4	0	3	4
For plea of suggestion	0	6	8	0	3	4	Authority to receive moneys out of Court	0	3	0	0	2	0
For issue in fact by consent	0	13	4	0	6	8	Suggestions, pleas to suggestions, and subsequent pleadings, of three folios or under, inclusive of ingrossment	0	4	0	0	3	0
For suggestion to revive, or writ of revivor, when no rule necessary	0	6	8	0	3	4	If above three folios, for every folio drawing	0	1	0	0	1	0
For rule for writ of revivor, when necessary	0	6	8	0	3	4	Issue for the trial of facts by agreement, for every folio	0	1	0	0	1	0
For proceeding in error	0	6	8	—			Special case, per folio	0	1	0	0	1	0
To defend for executor, after suggestion of death of original defendant	0	6	8	0	3	4	Agreement of damages and copy, if five folios or under	0	6	8	0	3	4
For agreement of damages	0	6	8	0	3	4	Above five folios, for every folio drawing	0	1	0	0	1	0
For grounds of error	0	6	8	—			And copy per folio	0	0	4	0	0	4
For assignment of errors after notice	0	6	8	—			Drawing writ of inquiry	0	3	4	Nil.		
For confession of action in ejectment as to the whole or in part	0	6	8	—			Special particulars of demand or set-off and copy, per folio	0	0	8	0	0	4
To reduce Special Jury	0	13	4	—			Short ditto, and copy	0	5	0	0	2	6

DRAWING PLEADINGS, &c.

Declaration, inclusive of instructions and engrossing, and of attendance to file or deliver	1	5	0	0	10	0	Abstract of pleas, when necessary, and fair copy, and copy for Judge	0	5	4	0	3	4
If above ten folios, for every folio	0	1	0	0	1	0	Bill of costs and copy for taxation, per folio	0	0	8	—		

	Above £20.			Under £20.				Above £20.			Under £20.		
	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.
Copy for the opposite party	0	0	4	—			By defendant to bring issue to trial, copy and service	0	4	0	0	3	0
Drawing bill of costs and copy, per folio 4d., not to exceed	—			0	4	0	For special jury to opposite attorney, copy and service, pursuant to section 109	0	5	0	0	3	0
Copy for the opposite party, per folio 4d., not to exceed	—			0	4	0	The like to sheriff, pursuant to section 112	0	5	0	0	3	0
Drawing and ingrossing common cognovit, and attendance thereon	0	13	4	0	6	8	To executor or administrator of sole defendant deceased, to appear to writ and suggestion	0	5	0	0	3	0
If special and long	1	0	0	0	10	0	To sheriff of renewal of execution, exclusive of any payment	0	5	0	0	3	0
Replication accepting money out of Court in full of demand, inclusive of instructions	0	4	0	0	3	0	To plaintiff in error to assign errors	0	5	0	0	3	0
Similiter or joinder of issue to obtain order to try before sheriff	—			0	3	0	Of discontinuance of error	0	4	0	0	3	0
INGROSSING AND COPYING.							Of confession of error	0	4	0	0	3	0
Declarations, above ten folios, per folio	0	0	4	0	0	4	Of plaintiff's in error intention to proceed to personal representatives of defendant deceased	0	5	0	0	3	0
Other pleadings before enumerated, above three folios, per folio	0	0	4	0	0	4	Of appearance when appearance duly entered and notice given on the day of appearance, but not otherwise	0	4	0	0	3	0
Issue (pleadings), if fifteen folios, or under	0	5	0	—			Of appearance to writ of revivor	0	5	0	0	3	0
If above fifteen folios, for every folio	0	0	4	0	0	4	To plead	0	4	0	0	3	0
Issue (pleadings), if ten folios or under	—			0	3	4	Of declaration when necessary, copy and service	0	5	0	0	5	0
Above ten folios, per folio	—			0	0	4	Of objection for misjoinder or nonjoinder of plaintiff, copy and service	0	4	0	0	3	0
All proceedings on paper, per folio	0	0	4	0	0	4	To sheriff to discharge a prisoner out of custody, copy and service	0	5	0	0	4	0
The like on parchment, per folio	0	0	6	0	0	4	Notice in ejectment to defend for part of premises and service	0	6	0	—		
Judgments for non-appearance on specially indorsed writs, or writs of revivor, and in ejectment, to be taken as nine folios, including the writ in actions above 20l., and six folios under 20l.							If above three folios, for every folio additional	0	1	0	—		
The allowance of 1l 3s. 2d. for interlocutory judgments will be discontinued, and the drawing, entry, and other charges will for the future be according to this scale.							Notice of admission of right and denial of ouster by a joint tenant, &c.	0	6	0	—		
The length of interlocutory and final judgments will be allowed as heretofore.							If above three folios, for every folio	0	0	4	—		
NOTICES.							Discontinuance by claimant in ejectment and service	0	5	0	—		
To declare, reply, and subsequent pleadings, copy and service	0	4	0	0	3	0	Of confession of action of ejectment as to the whole or in part, and service	0	10	0	—		
							Of trial, inquiry, demand of residence of plaintiff, of authority for issuing						

	Above £20.			Under £20.				Above £20.			Under £20.		
	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.
writ, and all other common notices . . . . .	0	4	0	0	3	0	return to writ, to alter or amend pleadings, to file any proceeding, to obtain office copies, consent to any summons, for postea (if necessary), to set down case, or demurrer, each judge with demurrer book or special case, to deliver points to each judge, to ascertain if books delivered, and other like attendances . . . . .	0	3	4	0	3	4
To admit or produce, if short . . . . .	0	7	6	0	5	0	To set down causes for trial . . . . .	0	6	8	0	3	4
The like, if long . . . . .	0	10	0	0	5	0	On each counsel with brief at trial, fee under twenty guineas, to reduce special jury, summons before a judge, and to pay money into court . . . . .	0	6	8	0	3	4
If very long and special a larger allowance may be made in cases above 20 <i>l</i> .							On counsel with brief, fee twenty guineas and above . . . . .	0	13	4			
Additional allowance for mileage, as upon the service of a writ							To receive money out of court . . . . .	0	10	0	0	6	8
COPY AND SERVICE.							Counsel with brief on motion, if above one guinea fee . . . . .	0	6	8	0	3	4
Of special and common rules . . . . .	0	5	0	0	4	0	If one guinea only . . . . .	0	3	4	0	3	4
Of special rule, above three folios, per folios additional . . . . .	0	0	4	0	0	4	Consultation with counsel . . . . .	0	13	4			
Of summons or order of a judge . . . . .	0	3	0	0	3	0	Conference with counsel . . . . .	0	6	8	0	3	4
Of order to charge a prisoner in execution . . . . .	0	5	0				Fee on every record or writ of trial . . . . .	0	6	8	0	3	4
Of master's note of receipt and of affidavits in error in fact . . . . .	0	7	0				For common jury panel . . . . .	0	3	4	0	3	4
Of master's note of receipt in error in law . . . . .	0	5	0				For special jury panel . . . . .	0	6	8	0	3	4
Mileage on services as upon a writ of summons.							To obtain names of viewers . . . . .	0	6	8	0	3	4
EJECTMENT.							To enter any suggestion on roll when necessary . . . . .	0	3	4	0	3	4
Instructions to sue, and examining deeds . . . . .	0	13	4				Attending court cause made remanet . . . . .	0	13	4	0	6	8
If a question of title . . . . .	1	1	0				Attending for fresh panels after remanet as before.						
ATTENDANCES.							Attendances incidental to agreement of amount of damages according to the circumstances.						
To search for appearance to writ of summons . . . . .	0	3	4	0	3	4	Attendance in pursuance of notice to admit . . . . .	0	6	8	0	3	4
Two searches will be allowed, if necessarily made.							For every hour beyond one . . . . .	0	6	8	0	3	4
To obtain undertaking to appear to process . . . . .	0	5	0	0	5	0	Attending making admissions, except under special circumstances . . . . .	0	6	8	0	3	4
To give undertaking to appear . . . . .	0	5	0	0	5	0	On reference to master upon common matters, such as to compute upon a bill or bond . . . . .	0	6	8	0	6	8
Deponent to be sworn (where allowed) for rules where no attendance in court, to enter exception to bail, to leave writ at sheriff's office, to obtain							Special matters . . . . .	0	13	4	0	6	8
							For every hour after the first . . . . .	0	6	8	0	3	4



	Above £20.			Under £20.				Above £20.			Under £20.		
	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.
If counsel in attendance, attorney attending . . .	0	6	8	0	3	4	writ of inquiry, when cause in paper and not tried, per day . . .	0	13	4	0	6	8
Above one hour . . .	0	13	4	0	6	8	On trial . . .	1	1	0	0	13	4
To attest confession in ejectment . . .	0	6	8	—			Ditto, if occupied the whole day . . .	2	2	0	—		
To file memorandum of error and obtain master's receipt . . .	0	6	8	0	3	4	Managing clerk to conduct cause at a distance when only one cause, per day	1	11	6	0	13	4
Assizes each day, exclusive of expenses, but inclusive of all matters transacted except one attendance upon each counsel with brief . . .	2	2	0	—			If more than one cause, each . . .	1	1	0	0	10	6
Expenses, exclusive of trav- elling, for each day . . .	1	1	0	—			Travelling and other ex- penses the same as at- torney.						
Travelling expenses, the amount actually and rea- sonably paid, but in no case exceeding 1s. per mile one way.							Court on motion rule nisi granted . . .	0	6	8	0	3	4
If two causes, in each per day for attendance . . .	1	11	6	—			The like on rule absolute after rule nisi . . .	0	13	4	0	6	8
If three causes or more, each . . .	1	1	0	—			The like previous to argu- ment, per day . . .	0	6	8	0	3	4
If more than one cause, ex- penses at 1l. each day, and travelling expenses to be divided equally.							The like in cases set down in the paper, not exceed- ing for a whole term . . .	2	0	0	1	0	0
Clerks' attendance discre- tionary if more than one cause, or in special cases, not exceeding per day, inclusive of expenses, ex- cept travelling . . .	1	1	0	—			After term when sittings, not exceeding . . .	1	0	0	0	10	0
In assize towns in which two lists are made, and in special jury causes, the attendance of the at- torney will not be al- lowed from the commis- sion day, but only from such period as his at- tendance became proper.							Taxation on postea . . .	0	13	4	0	3	4
On a writ of inquiry or writ of trial at a distance, if no other business, inclusive of expenses, per day . . .	2	2	0	1	1	0	to . . .	1	0	0	0	6	8
If two cases, each . . .	1	11	6	0	13	4	More according to time occupied.						
If more than two cases, each . . .	1	1	0	0	13	4	Ditto, costs of cause { b 6 8 } otherwise than on { to } 0 3 4 postea . . . { 0 13 4 }						
Travelling expenses as be- fore, and to be appor- tioned if more than one cause							Ditto, costs of judgment only, and ordinary inter- locutory matters . . .	0	3	4	0	3	4
In London or Middlesex or in same town, on trial or													

## BRIEFS.

Minutes of evidence . . .	—	0	13	4
Brief and one fair copy where cause tried before a Judge of a Court of Record where attorneys are not allowed to act as advocates, not exceeding	—	2	0	6
In the like case, fee to counsel and clerk . . .	—	1	3	0
For drawing, per folio . . .	0	1	0	—
Copying . . .	0	0	4	—

Above £20.	Under £20.
£ s. d.	£ s. d.

Above £20.	Under £20.
£ s. d.	£ s. d.

**TERM FEES AND LETTERS.**

Proper business . . . . .	0	13	0	0	10	0
Agency . . . . .	0	15	0	0	12	0
Letters when no term fee proper business . . . . .	0	3	0	0	2	0
Agency . . . . .	0	5	0	0	3	0
Letters in interlocutory matters proper . . . . .	0	2	0	—	—	—
Agency . . . . .	0	3	0	—	—	—
In actions under 20 <i>l.</i> no allowance will be made for "letters" for the vacation preceding the term in which a term fee shall be allowed.						

**LETTERS.**

Letter before action and other letters . . . . .	0	3	6	0	2	0
Circular letters after the first . . . . .	0	1	6	0	1	0

**AFFIDAVITS.**

Drawing special affidavits, per folio . . . . .	0	1	0	0	1	0
Ingrossing same, exclusive of affidavits of increase	0	0	4	—	Nil.	—
Common affidavits, of five folios or under, including ingrossing and oath . . . . .	0	6	0	0	5	0
Affidavit of increase, in- cluding ingrossing and oath . . . . .	—	—	0	5	0	—
Copy for the other side . . . . .	—	—	0	2	0	—

**SEARCHES.**

All common searches, ex- clusive of payment . . . . .	0	3	4	0	3	4
If very long . . . . .	0	13	4	0	6	8

**COUNSEL.**

To attend reference to master, not exceeding, except on examination of witnesses . . . . .	2	2	0	—	Nil.	—
---	---	---	---	---	------	---

To settle special indorse-  
ment on writ . . . . .

Nil. Nil.

**WARRANT OF ATTORNEY.**

Costs of signing judgment 3 10 0 —

**DEFENDANTS.**

Appearance . . . . . 0 7 0 0 6 0

For each additional defend-  
ant, inclusive of pay-  
ment . . . . . 0 1 6 0 1 6

A second summons and  
order for time to plead  
shall be allowed in spe-  
cial cases above 20*l.*  
when necessary.

**COUNSEL'S CLERK'S FEES.**

The fees to be allowed to  
counsel's clerk not to  
exceed as under :—

Upon a fee under 5 guineas	0	2	6	—
5 guineas and under 10 guineas . . . . .	0	5	0	—
10 guineas and under 20 guineas . . . . .	0	10	0	—
20 guineas and under 30 guineas . . . . .	0	15	0	—
30 guineas and under 50 guineas . . . . .	1	0	0	—
50 guineas and upwards . . . . .	2	10	0	—
per cent.				

**ON CONSULTATIONS.**

Senior's clerk . . . . .	0	7	6	—
Junior's clerk . . . . .	0	2	6	—
On general retainer . . . . .	0	10	6	—
On common retainer . . . . .	0	2	6	—
On conference . . . . .	0	5	0	—

ALLOWANCE TO WITNESSES.

	If resident in the Town in which the Cause is tried.			If resident at a Dis- tance from the Place of Trial.		
	£	s.	d.	£	s.	d.
Common witnesses, such as labourers, journeymen, &c., per diem . . .	0	5	0	0	5	0
Master tradesmen, yeomen and farmers, per diem . . .	0	7	6	0	10	0
Auctioneers and accountants, per diem . . .	0	10	6	0	10	0
Professional men, per diem .	1	1	0	—		
Ditto inclusive of all, except travelling, expenses, per diem . . .	0	0	0	2	2	0
Attorneys or other clerks, per diem . . .	0	10	6	0	15	0
Engineers and surveyors, per diem . . .	1	1	0	3	3	0
Notaries . . . per diem .	1	1	0	1	1	0
Gentlemen . . .	<div style="display: inline-block; vertical-align: middle;"> <div style="text-align: center;">1 1 0</div> <div style="font-size: small;">with sub- poenas, but no daily al- lowance, except af- ter the first day, and then a rea- sonable sum for re- freshment and con- veyance.</div> </div>			1	1	0
Esquires . . .				per diem.		
Bankers . . .						
Merchants . . .						
Females according to sta- tion in life, per diem . . .	0	5	0	0	5	0
Police inspector, per diem .	0	5	6	0	7	6
Police constable . . .	0	3	0	0	5	0

£ s. d. £ s. d.

If the witnesses attend in one cause only they will be entitled to the full allowance. If they attend in more than one cause they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed 1s. per mile one way.

MISCELLANEOUS.

Close copy of proceedings in agency cases, 4d. per folio, according to actual length.

In cases under 20l. no allowance will be made in respect of the following matters:—

Attending deponent to be sworn to affidavit.

Advice on evidence.

Maps, plans, or models.

For maps or plans, when used in cases above 20l., from 1l. 1s. to 3l. 3s.

All other allowances will be made as heretofore, except so far as it may be necessary to reduce or increase the same conformably to the scale of fees published on the 24th of November, 1852.

CAMPBELL.  
JOHN JERVIS.  
FRED. POLLOCK.  
E. H. ALDERSON.  
W. WIGHTMAN.  
T. J. PLATT.  
W. EBLE.  
T. N. TALFOURD.  
SAML. MARTIN.

27th January, 1853.

USHERS, COURT-KEEPERS, &c., OF  
THE SUPERIOR COURTS.

TREASURY ORDER.

WHEREAS, by an Act, passed in the Session of Parliament holden in the 15th & 16th years of the reign of her present Majesty, chap. 73, intitled "An act to make provision for a permanent establishment of officers to perform the duties at *Nisi Prius* in the Superior Courts of Common Law, and for the payment of such Officers and of the Judges' Clerks, by Salaries, and to abolish certain Offices in those Courts," it was, amongst other things, enacted, that it should and might be lawful for the Commissioners of her Majesty's Treasury, and they were thereby empowered and required, by and with the sanction of the Lord Chief Justices of the Courts of Queen's Bench and Common Pleas and the Lord Chief Baron of the Exchequer, as soon as conveniently might be, to ascertain and fix the number of *Ushers, Court-keepers, Messengers*, and other subordinate officers and assistants in the said Superior Courts, and of attendants on the Judges (other than the Judges' Clerks), which should be sufficient for the due performance of the duties required to be rendered in respect of such subordinate offices and appointments, and for the necessary attendance on the Judges; and a list or lists of the offices and appointments, when so fixed and ascertained, should thereupon be published by and under the authority of the said Commissioners of her Majesty's Treasury, in the *London Gazette*; and from and after such publication, all such of the said offices and appointments not contained in such list or lists should be, and the same were, thereby declared to be abolished.

In pursuance of the said Statute, the Commissioners of her Majesty's Treasury, by and with the sanction of the Lord Chief Justices of the Courts of Queen's Bench and Common Pleas and the Lord Chief Baron of the Exchequer, have ascertained and fixed the number of *Ushers, Court-keepers, Messengers*, and other subordinate officers and assistants in the said Superior Courts, and of attendants on the Judges (other than the Judges' Clerks), to be as set forth in the following list, which are considered to be sufficient for the due performance of the duties required to be rendered in respect of such subordinate offices and appointments, and for the necessary attendance on the Judges; and the said Commissioners of

her Majesty's Treasury authorize and direct the said list of officers and appointments to be published in the *London Gazette*, namely:—

*Court of Queen's Bench.*

- 4 Ushers and Criers.
- 3 Tipstaffs.
- 1 Court-keeper.
- 1 Messenger and Porter.
- 1 Trainbearer.

*Court of Common Pleas.*

- 4 Ushers and Criers.
- 1 Tipstaff.
- 1 Court-keeper.
- 1 Messenger and Porter.
- 1 Trainbearer.

*Court of Exchequer.*

- 4 Ushers and Criers.
- 1 Tipstaff.
- 1 Court-keeper.
- 1 Messenger and Porter.
- 1 Trainbearer.

NOTES OF THE WEEK.

UNOPPOSED PETITIONS IN VICE-CHANCELLOR KINDERSLEY'S COURT.

WHERE an unopposed petition is directed by the Vice-Chancellor Kindersley to stand over to amend, or to obtain further evidence, with liberty to mention it any morning, the registrars, upon application of the solicitor or counsel, may put such petition in the paper for the following day, such day not being a motion day, unless the registrar shall consider that by so doing it will interfere with the regular business of the day, and in that case he is to put it in the paper for the next day following.

THE NEW EXAMINATION AND ADMISSION RULES.

These Rules, which will be found at p. 245, *ante*, will not come into operation till the first day of next Trinity Term. We shall take an early opportunity of giving some explanatory notes upon them,—showing the grounds on which the amendments and additions in the present rules were adopted by the Judges, at the suggestion of the Incorporated Law Society.

RECENT DECISIONS IN THE SUPERIOR COURTS  
AND SHORT NOTES OF CASES.

*Court of Appeal.*

*Storrs v. Benbow.* Jan. 21, 1853.

APPEAL FROM DECREE AFTER EXPIRATION  
OF FIVE YEARS.

*Order on petition, which was unopposed, for leave to appeal under the 6th Order of*

*August 7 last, from a decree of Sir John Leech, Master of the Rolls, made in 1833.*

THIS was a petition, presented in accordance with the direction of the Court (reported *ante*, p. 231), for leave to appeal under the 6th Order of August 7 last, against a decree made in the year 1833, by Sir John Leech, M. R. The petition was unopposed.

*Shebbeare* in support.

The Court made the order as asked.

Jan. 19.—*In re Armstrong*—Stand over.

— 19.—*Attorney-General v. Wiggeston Hospital*—Petition refused, with costs.

— 19.—*Wastell v. Leslie*—Stand over.

— 20.—*Brennan v. Preston*—Motion for appeal from Vice-Chancellor Wood refused.

— 21.—*Morgan v. Milman*—Appeal dismissed from Vice-Chancellor Turner.

— 22.—*Wilkinson v. Cummins and others*—Appeal from Vice-Chancellor Wood dismissed, with costs.

— 22, 24.—*Evans v. Evans*—Cur. ad. vult.

— 24, 25.—*Derbshire v. Home*—Part heard.

### Lords Justices.

*Roberts v. Berry.* Jan. 20, 1853.

VENDOR AND PURCHASER.—CONDITIONS OF SALE.—TIME, OF ESSENCE OF CONTRACT.—SPECIFIC PERFORMANCE.—DEMURRER.

A sale took place on July 22, under conditions which provided for the payment of a deposit and of the remainder on or before August 8, at which time the purchase was to be completed; and by another condition it was provided, that in order to save expense, the vendor should within seven days from the day of sale, on application for the same, make and deliver to the purchaser an abstract of the title: Held, affirming the decision of the Master of the Rolls, and overruling a demurrer to a bill filed to enforce the performance of the contract upon the defendant refusing to complete as the abstract had been only delivered on the 3rd August, that time was not of the essence of the contract under the conditions of sale.

THIS was an appeal from the Master of the Rolls. It appeared that certain ground rents were sold by auction to the defendant on July 22, 1852, for 800*l.*, a deposit being paid of 160*l.*, and under the conditions of sale the remainder was to be paid on or before the 8th August, at which time the purchase was to be completed. The fourth condition provided, that in order to save expense, within seven days from the day of sale, the vendor should, on application for the same, make and deliver to the purchaser an abstract of title. The purchaser applied for the abstract on the 29th July, and it was furnished on August 3. The purchaser having thereupon refused to complete, this bill had been filed to enforce the specific performance of the contract, to which a demurrer had been put in, and the Master of the Rolls having overruled it on the ground that time was not of the essence of the contract, this appeal was presented.

*J. Hinde Palmer*, in support, cited *Parkin v. Thorold*, 2 Sim. N. S. 1.

*Tedd and W. Hislop Clarke*, contra, were not called on.

The Lords Justices said, there was nothing on the face of the contract to show that time was of the essence of the contract. The sub-

stance of the contract was for sale on the one hand, and purchase on the other, and it was not made essential it should be done within a particular time. The appeal would therefore be dismissed—the costs of the demurrer, both in the Court below and here, to be costs in the cause.

Jan. 19.—*Esparte James and another, in re Tratt*—Arrangement come to.

— 19.—*Thornton v. Court*—On appeal from Master of the Rolls, action to be brought at law.

### Master of the Rolls.

*Page v. Cooper.* Jan. 22, 1853.

FORECLOSURE BILL.—DEMURRER.—POWER OF TRUSTEES FOR SALE TO MORTGAGE.

Held, allowing with costs a demurrer to a foreclosure bill, that a power to trustees of sale does not authorise their raising money by way of mortgage on the property for the purposes of the trust. But leave was given to amend within a reasonable time, by seeking other relief than foreclosure.

THIS was a demurrer to this bill to foreclose a mortgage. It appeared that upon the defendant's marriage certain property was conveyed to trustees on trust for sale, and for the application of the proceeds as directed by the settlement, dated in June, 1832. The trustees, in 1839, mortgaged in order to raise the moneys required for the purposes of the trust, and the plaintiff was assignee of the mortgagee.

*Roupell and Haynes* in support of the demurrer, on the ground a sale and not a mortgage was authorised, citing *Stroughill v. Anstey*, 1 De G., M'N. & G. 635; 44 L. O. 364.

*R. Palmer and G. S. Law* for the plaintiff, contra.

The Master of the Rolls said, the demurrer must be allowed with costs, but with liberty to the plaintiff to amend within a reasonable time by seeking relief in a different form to that of foreclosure.

Jan. 19, 20.—*York and North Midland Railway Company v. Hudson*—Bill dismissed.

— 21.—*Meadows v. Meadows*—Decree to set aside deed.

— 22.—*Philpott v. Kerr*—Decree for lease to be given up to be cancelled, with costs.

— 24.—*Osborn v. Milford*—Bill dismissed, with costs.

— 25.—*Cockell v. Bacon*—Part heard.

### Vice-Chancellor Kindersley.

*Gwynnap v. Burns.* Jan. 12, 1853.

SUIT TO SET ASIDE DEED OF GRANT OF RENT-CHARGE ON GROUND OF SECRET TRUST FOR CHARITABLE USES.—SPECIAL CLAIM.

Held, that a bill must be filed to set aside a deed of grant of a rent-charge on real estate, on the ground of there being a secret trust for charitable purposes, and leave was refused to file a special claim for that object, where the Master in an administration suit directed the next of kin to obtain such deed to be set aside upon a claim.

In an administration suit, a question had been raised, whether a rent-charge of 95l. per annum under a deed of grant, executed during the lifetime of the testator, in favour of a Mr. Burns, was not invalid on the ground of there being a secret agreement that it should be applied upon charitable trusts after the testator's death. The Master having directed the next of kin to file a claim for the purpose of setting aside the charge, this application was now made for leave to file the special claim which had been accordingly prepared.

W. D. Lewis, in support, submitted it would be necessary to file a bill.

The Vice-Chancellor said, that a bill ought to be filed, and not a claim, and refused the application accordingly.

*Williams v. Lomas.* Jan. 22, 1853.

CREDITOR'S SUIT.—TAKING ACCOUNTS AT CHAMBERS.—COSTS.

In a creditor's suit, the Court made a decree for a sale of the real estates, and for the usual accounts to be taken at Chambers of the personal estates, and refused to make a decree at once, although the trustees had filed an affidavit as to their receipts and payments. And an application was also refused for the costs of taking such accounts to be reserved, in order that they might be borne by the parties at whose instance the inquiries were taken in the event of the executors' accounts proving correct.

THIS was a creditor's suit. It appeared that the executors had filed affidavits stating their receipts and payments.

Eiderton and Nugent, for the plaintiff, asked for a decree for the sale of the real estate, and for the usual accounts to be taken at Chambers.

Hare, for the executors and residuary legatees, contra, on the ground a decree might at once be taken as on an account of personal estate duly taken.

Goodeve, for other defendants, contended an inquiry should be had at Chambers.

The Vice-Chancellor directed the usual accounts as to the personal and real estates, and declined to reserve the costs of taking the accounts at Chambers, so that they might be borne by the parties seeking the inquiry, if the executors' accounts were correct.

*Palmer v. Simmonds.* Jan. 20, 1853.

SPECIAL CASE.—PROOF OF FACTS BEFORE CHIEF CLERK AT CHAMBERS.

Held, that the proof of facts on a special case

should be made before the chief clerk at Chambers in the first instance, and upon his being satisfied with the evidence an order would be made. So held, on an application for leave to set down a special case for hearing, where it was necessary to verify facts in consequence of the infancy of one of the parties.

THE Vice-Chancellor, upon this application for leave to set down for hearing a special case, and in which it was necessary to verify certain facts in consequence of one of the parties being an infant, said, that as it was a mere matter of detail, the proper course would be to proceed in the first instance before the Chief Clerk at Chambers, and the order would be made on his being satisfied with the evidence.<sup>1</sup>

Bacon, Ellis, and Law appeared for the several parties.

*In re Dryland's Estate.* Jan. 21, 1853.

METROPOLITAN BUILDING ACT.—SERVICE OF PETITION ON COMMISSIONERS FOR PAYMENT OF DIVIDENDS TO SECOND TENANT FOR LIFE.

Held, that a petition for the continuation of the payments of the dividends of a fund paid into Court under the Metropolitan Building Act, to a second tenant for life after the death of the first, need not be served on the Commissioners of Woods and Forests.

THIS was a petition for the continuation of the payment of the dividends of a fund which had been paid into Court by the Commissioners of Woods and Forests, under the Metropolitan Building Act, for certain property taken under the powers of that Act. It appeared the first tenant for life had died, and this petition was presented on behalf of the second.

Sheffield, in support, referred to *Espartero Hordern*, 2 De G. & S. 263, to show service of the petition on the Commissioners was unnecessary.

The Vice-Chancellor made the order accordingly.

*Wright v. Vernon.* Jan. 21, 1853.

PRODUCTION OF DOCUMENTS.—TO ASSIST PLAINTIFF IN MAKING OUT PEDIGREE.

An order was made for the production of documents, excepting those specially protected, upon the application of a plaintiff, in order to assist him in making out his pedigree, which was necessary for the purpose of ascertaining his rights in certain settled estates.

Malins and Smyth, for the plaintiff, appeared

<sup>1</sup> His Honour also intimated, that special cases might, if the parties preferred it, be set down for hearing at once before the Lords Justices.

In support of this motion for the production of documents in order to assist him in making out his pedigree, which was rendered necessary for the purpose of ascertaining his rights in certain estates under the will of Sir Thomas Samwell, devised to various successive tenants in tail, with ultimate remainder to the testator's own right heirs. It appeared that the last tenant in tail died in 1843, and that the testator's three nieces were the right heirs. Two of the nieces gave, by will, their shares to the heirs of Sir Thomas Samwell by his second wife, and a question arose, whether a son by such marriage took an estate in fee or in tail, the plaintiff contending he took in tail.

*Campbell and Bagshawe* for the defendant, contra.

The Vice-Chancellor made an order for the production of all documents not specially protected.

Jan. 21, 22, 24.—*Woodcock v. Oxford, Worcester, and Wolverhampton Railway Company*—Part heard.

—25.—*Petre v. Petre*—Bill dismissed, with costs.

—25.—*Collett v. Newman*—Part heard.

### Vice-Chancellor Stuart.

*Howard v. Sewell.* Jan. 20, 1853.

JURISDICTION OF EQUITY IMPROVEMENT ACT.—MODE OF TAKING EVIDENCE AFTER DECREE UNDER S. 41.

*A motion on behalf of a defendant was refused with costs, for leave to examine the steward of a manor in reference to its custom, either before Master or an Examiner, after decree. And held, that under the 15 & 16 Vict. c. 86, s. 41, a subpoena must issue.*

THIS was a motion on behalf of the defendant for leave to examine the steward as to the custom of a manor, either before the Master or the Examiner. It appeared a decree had been made in the suit.

By s. 41 of the 15 & 16 Vict. c. 86, it is enacted, that "in cases where it shall be necessary for any party to any cause depending in the said Court to go into evidence subsequently to the hearing of such cause, such evidence shall be taken as nearly as may be in the manner hereinbefore provided with reference to the taking of evidence with a view to such hearing."

*W. H. Terrell* in support; *Rogers*, contra.

The Vice-Chancellor said, that the proper course, under s. 41, was to obtain a subpoena, and refused the motion accordingly, with costs.

*Bryson v. Warwick and Birmingham Canal Company.* Jan. 20, 1853.

DEPOSITIONS TAKEN BEFORE LATE EXAMINER.—ADMISSION IN EVIDENCE ALTHOUGH NOT SIGNED.

*An application was granted for the depositions which had been taken by the late Examiner*

*of the Court, and which were signed by the witnesses, to be received in evidence, although not signed by him in consequence of his sudden death,—the exhibits being verified by affidavit. And leave was refused to defendants to cross-examine some of the witnesses again.*

THE witnesses had been examined *vide* *note* in this case before Mr. Plumer under the new practice, and the depositions had been taken down by him in the usual way and signed by the witnesses, but in consequence of his sudden death he had not authenticated them by his own signature. This motion was therefore made that such depositions might notwithstanding be received in evidence.

*De Gex* for the plaintiff, in support.

*C. Jones*, for some of the defendants, asked leave to cross-examine some of the witnesses again.

*Elderton, Hallett, and Baggallay*, for other defendants, did not oppose.

The Vice-Chancellor, in granting the application, said, that there was no ground for affording a fresh opportunity for cross-examining the witnesses, as the defendants' counsel had attended, and the cross-examination and re-examination had been completed. The exhibits to be verified by affidavit.

Jan. 19.—*Somerville v. Jamieson*—Cause ordered to be struck out of the paper—costs of the day to be paid by the solicitor.

—19.—*Colombine v. Penhall*; *Penhall v. Miller*—*Cur. ad. vult.*

—19, 22.—*Penhall v. Elwin*—*Cur. ad. vult.*

—24, 25.—*King v. Savery and another*—Part heard.

### Vice-Chancellor Wood.

*Fletcher v. Rogers.* Jan. 18, 1853.

WILL.—CONSTRUCTION.—WHETHER LIFE ESTATE OR ABSOLUTELY.—DECLARATION UNDER 15 & 16 VICT. C. 86, S. 50, AS TO INFANT'S RIGHTS.

*Bequest of property to testator's brother and two sisters, to be equally divided amongst all and each of them if living at the time of his decease, "then amongst their surviving children."* Held, that the brother and two sisters only took life interests, and their children after their death. And a declaration was made under the 15 & 16 Vict. c. 86, s. 50, that such children as were alive at the death of their parent were entitled to his or her share.

A TESTATOR, after directing the whole of his property to be sold, bequeathed the remainder of his property to his brother and his two sisters, to be equally divided amongst all and each of them, if living at the time of his decease, "then amongst their surviving children." A question arose whether the brother and sister took absolute or only life interests in the residue, and a declaration was also sought

under the 15 & 16 Vict. c. 86, s. 50,<sup>1</sup> as to the rights of their children.

*Shadwell, Bovill, and Jessel* for the respective parties.

The Vice-Chancellor said, that the brother and sisters were entitled for life, and their children after their death, and that such children as were alive at the death of their parent were entitled to his or their share.

Jan. 20.—*Wilkinson v. Cummins and others*—Motion for injunction refused.

—21.—*Fitzgerald v. Bult*—Motion refused for injunction to restrain action, on undertaking to deliver transcript of account.

—21.—*Cousins v. Vesey*—*Cur. ad. vult.*

—22.—*Duffield v. Denny*—Judgment herein.

—22.—*Duffield v. Sturges*—Plaintiff held entitled to be admitted as shareholder of company in place of trustees.

—24.—*Boys v. Bradley*—Judgment on construction of will.

—24.—*Kelson v. Kelson*—Adjournment of hearing of bill to set aside settlement for inquiry at Chambers as to consideration.

—19, 25.—*Harford v. Rees and another*—Objection overruled, that defendant submitting to be examined for plaintiff, could not have a decree against him, and decree for payment into Court.

### Court of Queen's Bench.

*Cromont v. Ashley and wife.* Jan. 14, 1853.

COMMON LAW PROCEDURE ACT.—DELIVERY OF PARTICULARS WITH DECLARATION, WHERE WRIT SPECIALLY ENDORSED.

*Rule nisi for new trial, on the ground of the rejection of evidence, which related to the particulars of demand delivered with the declaration, but had been rejected as not within the special endorsement on the writ, under the 15 & 16 Vict. c. 76, s. 25.*

THIS was a motion to set aside a nonsuit and for a new trial of this action, on the ground of the improper rejection of evidence. It appeared that the writ had been specially endorsed under the 15 & 16 Vict. c. 76, s. 25,<sup>2</sup> but that the plaintiff had delivered fresh particulars of demand with his declaration. On the trial before Lord Campbell, C. J., at the Middlesex Sittings, on Nov. 27 last, evidence had been rejected which related to the particulars so delivered, on the ground it was not

within the special endorsement on the writ, and the plaintiff was nonsuited.

*Udall* in support,

The Court granted a rule.

Jan. 19.—*Bessell v. Wilson*—Rule discharged to enter verdict for defendant.

—19.—*De Meroda v. Dawson and others*—Rule absolute for new trial.

—19.—*Regina v. Waghorn*—*Cur. ad. vult.*

—21, 22.—*Regina v. Newman*—*Cur. ad. vult.*

—22.—*In re ———, gent., one, &c.*—Rule nisi to strike attorney off the Roll for permitting unqualified person to use his name in collecting debts.

—24.—*Regina v. Thwaites*—Rule nisi for *quo warranto* on town councillor of Blackburn.

—24.—*Regina v. Hazeldine*—Rule nisi for *quo warranto* on town councillor of Harwich.

—24.—*Dancy v. Richardson*—Rule nisi to set aside verdict for defendant and for new trial.

—24.—*Cobbett v. Lord Truro*—Rule refused for new trial.

—24.—*Regina v. Justices of Yorkshire*—Rule nisi for certiorari to bring up order of justices relating to poor-rate on the ground of being interested parties.

—25.—*Coe v. Lawrance*—On demurrer to declaration, judgment for defendant.

### Queen's Bench Practice Court.

Jan. 19.—*In re Boram*—Order for delivery up of child to father.

—24.—*Regina v. Blackburne*—Rule nisi for admission of prisoner to bail and for certiorari to bring up depositions before coroner.

—25.—*Regina v. Skipper and another*—Rule nisi for *quo warranto* on town councillors of Norwich.

—25.—*Regina v. Martin and another*—Rule nisi for criminal information against overseers.

—25.—*Regina v. Justices of Denbighshire*—Rule nisi for certiorari to bring up proceedings relating to appeal against poor-rate, on the ground of excess of jurisdiction.

### Court of Common Pleas.

*Taylor v. Addyman.* Jan. 21, 1853.

COUNTY COURT ACTION.—ACTION OF DETINUE.—JURISDICTION.

Held, that the County Court had jurisdiction under the 13 & 14 Vict. c. 61, ss. 6 and 11, in a plaint which was brought to recover possession of certain account-books, of the alleged value of 50*l.*, and which the defendant refused to deliver up, and a Judge's order for a prohibition was discharged.

Quere, whether the Judge had power to amend the plaint by inserting the words, that the defendant had converted the books to his own use, in order to avoid an objection that the Court had no jurisdiction *in detinue*.

THIS was a motion for a rule nisi to set

<sup>1</sup> Which enacts, that "it shall be lawful for the Court to make binding declarations of right without granting consequential relief."

<sup>2</sup> Which enacts, that "when a writ of summons has been endorsed in the special form hereinbefore mentioned, the endorsement shall be considered as particulars of demand, and no further or other particulars of demand need be delivered, unless ordered by the Court or a Judge."



aside an order of *Martin, B.*, for a prohibition on the Judge of the York County Court against proceeding to try an action which was brought to recover possession of certain account-books of the alleged value of £501., and which the defendant refused to deliver up. On the trial, the Judge had amended the plaint by inserting the words, that the defendant had converted the books to his own use, in order to avoid an objection that the action was in detinue and could not be brought in the Court under the 9 & 10 Vict. c. 95, as extended by the 13 & 14 Vict. c. 61.

*Kemplay* in support, and on the ground the Judge had no power to amend the plaint.

*Robert Hall* showed cause against the rule in the first instance.

*Kemplay* was not heard in reply.

The Court said, the two Statutes must be read together as one Act, and as the latter Statute, by ss. 6 and 11, mentioned detinue as a plaint which might be brought in the County Court, the rule would be made absolute to set aside the Judge's order for a prohibition.

Jan. 20.—*Quartermaine and another v. Bittleston and others*—On special case, judgment for the plaintiffs.

— 19, 22.—*Matthew v. Osborne*—Part heard.

— 22.—*Evelyn v. Williams and others*—Rule nisi to set aside Judge's order.

— 22.—*Blackman v. Asplin*—Rule nisi on attorney to pay costs of summons.

— 24.—*Gibbon v. Gibbon*—New trial allowed, on appeal from County Court.

— 24.—*Foster and others v. Oxford, Worcester, and Wolverhampton Railway Company*—On demurrer to plea, judgment for plaintiff.

— 25.—*Berry v. Alderman*—Rule nisi for new trial on the ground of improper reception of evidence, and as to whether verdict against evidence, *cur. ad. vult.*

— 25.—*Levi v. Hooke*—*Cur. ad. vult.*

### Court of Exchequer.

*Millington v. Brown.* Jan. 25, 1853.

COMMON LAW PROCEDURE ACT.—AMENDMENT OF DECLARATION.—ABANDONMENT OF JUDGE'S ORDER.—DEFENDANT'S COSTS.

*Rule refused on plaintiff to pay the costs incurred by the defendant, by reason of the plaintiff's having obtained an order to amend his declaration, under the 15 & 16 Vict. c. 76, on payment of costs, but having afterwards abandoned it.*

THIS was a motion on behalf of the defendant for a rule nisi on the plaintiff to pay the costs incurred by the former by reason of his having obtained an order to amend his declaration. It appeared that the order had been obtained on Sept. 16 to amend on payment of costs, and a copy was served the same day and an appointment made to tax the costs.

The defendant then instructed his pleader to prepare special pleas. The order was, afterwards abandoned.

*H. Pearson* in support.

The Court refused the rule.

Jan. 19.—*Arnold v. Gausson and another*—*Cur. ad. vult.*

— 20.—*Rencaus v. Teakle*—Rule nisi for new trial.

— 20.—*Mayne v. Wyld*—*Cur. ad. vult.*

— 21.—*Tanner v. Woolmer and others*—*Cur. ad. vult.*

— 21.—*De Claremont v. Bradbury and another*—Rule discharged to set aside verdict for the plaintiff and to enter a nonsuit.

— 22.—*Scothorn v. South Staffordshire Railway Company*—Rule discharged to set aside verdict for plaintiff and to enter a nonsuit.

— 22.—*Woodhouse v. Craig*—*Cur. ad. vult.*

— 24.—*Montague and others v. Kater*—*Cur. ad. vult.*

— 25.—*Mackinnon v. Penson*—Rule absolute to arrest judgment.

— 25.—*Shaw v. Bank of Scotland*—Rule discharged for inspection of machinery alleged to infringe plaintiff's patent.

### Court of Exchequer Chamber.

*Regina v. Riley.* Jan. 22, 1853.

INDICTMENT FOR STEALING A LAMB.—WHEN OFFENCE COMPLETE.

*A prisoner had placed 29 lambs in a field, and on a sale thereof on the following day, the buyer drew his attention to there being 30 lambs, but he offered to sell the whole number. It appeared he did not know at the time of taking the flock out of the field the lamb in question was amongst them: Held, confirming the conviction, that the felony was complete upon the prisoner having appropriated the lamb upon his becoming conscious it was not his property.*

THIS was a point reserved for the opinion of the Court. It appeared the prisoner had put 29 lambs in a field with other lambs, and had, upon a buyer counting them and finding there were 30 lambs, offered to sell the whole number. Upon the trial of an indictment for stealing the lamb, the jury found that, although at the time of taking his flock from the field, the prisoner did not know the lamb in question was among the others, he was guilty of the felony upon the lamb being pointed out to him by the buyer, and was sentenced to six months' imprisonment.

Hon. A. Liddell for the prisoner; *Greening*, contra, was not called on.

The Court said, that the felony took place immediately the prisoner appropriated the lamb, upon becoming conscious it did not belong to him, and confirmed the conviction accordingly.

Jan. 22.—*Regina v. Anderson*—*Cur. ad. vult.*

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## MERCANTILE LAW.

## CHARTER-PARTY.

1. *Construction.*—*Freight payable at a certain rate, all articles not being specifically enumerated.*—By a charter-party, it was agreed that the ship should proceed to Baltimore, and there load a full cargo of produce, and proceed therewith to the United Kingdom, and deliver the same, on being paid freight "at and after the rate of 5s. 6d. per barrel of flower, meal, and naval stores, and 11s. per quarter of 480lbs. for Indian corn or other grain;" that the cargo was not to consist of less than 3,000 barrels of flour, meal, or naval stores; and that not less flour or meal than naval stores was to be shipped.

The vessel arrived here with a cargo of 769 hogsheads of tobacco, 6,047 bushels of bran, 2,000 bushels of oats, 5,000 oak staves, and three barrels of flour.

The evidence showed, that a quarter of Indian corn or wheat weighing 480lbs. would occupy a space of 10½ cubic feet, and that a quarter of American oats, which weighed upon an average 272lbs., would occupy a space of 16 cubic feet. It also appeared that oats were not a usual shipment from America:—

*Held*, that "other grain," in this charter-party must be taken to mean such description of grain as would average 480lbs. to the quarter, and therefore to exclude oats; and that the shipowner was entitled to receive freight upon the supposition that 3,000 barrels of flour, meal, or naval stores had been shipped, and, for the rest of the space at the rate of 11s. per quarter of Indian corn, or other grain of the average weight of 480lbs. to the quarter. *Warren v. Peabody*, 8 C. B. 800.

Cases cited in the judgment: *Capper v. Foster*, 3 N. C. 938; 5 *Scott*, 129; *Cockburn v. Alexander*, 6 C. B. 791.

2. *Freedom of ship from suspicion.*—There is no undertaking on the part of a shipowner that his vessel (if really fit) shall be free from suspicion of unfitness to receive a cargo on board. *Towse v. Henderson*, 4 Exch. R. 890.

3. *Construction of.*—Under the terms of a charter-party, the plaintiff's ship was to proceed to B., or as near thereto as she could safely get, and to load from the defendant's agent a full cargo of timber. The vessel proceeded within the harbour at B., and there received a portion of the cargo, but owing to want of water she was then taken without the bar, but as near as she could safely get, where it was requested that the rest of the cargo should be delivered, which was refused: *Held*, that the plaintiff had complied with the charter-party, and that the defendant was liable for such refusal. *Shield v. Wilkins*, 5 Exch. R. 304.

## COLLISION.

1. *Negligence of both parties.*—In an action of negligence, it appeared that the plaintiff was a passenger on an omnibus which was

racing with the defendant's omnibus, and, in trying to avoid a cart, a wheel of the defendant's omnibus came in contact with the step of the omnibus on which the plaintiff was riding, which caused the latter to swing towards the kerb-stone, and the speed rendering it impossible to pull up, the seat on which the plaintiff sat struck against a lamp-post and he was thrown off: *Held*, that the jury were properly directed that the plaintiff was not disentitled to recover merely because the omnibus on which he sat was driving at a furious rate; and that, if the jury thought that the collision took place from the negligence of the defendant's omnibus, so that the other omnibus was not in fault in not endeavouring to avoid the accident, the defendant was liable. *Rigby v. Hewitt*, 5 Exch. R. 240.

2. *Negligence of both parties.*—A person who is guilty of negligence, and thereby produces injury to another, cannot set up as a defence, that part of the mischief would not have arisen if the person injured had not himself been guilty of some negligence.

Therefore, where the plaintiff, a passenger on board a steam-boat, was injured by the falling of an anchor, caused by the defendant's steam-boat striking the other steam-boat, *held*, that it was improper to direct the jury, that they should find for the plaintiff, unless there was negligence, either in the stowage of the anchor or in the plaintiff putting himself in the place where he was, so as to lead or contribute to the mischief, in which case the plaintiff could not recover. *Greenland v. Chaplin*, 5 Exch. R. 243.

## FREIGHT.

*What amounts to absolute assignment of interest in, to prevent vesting in assignees.*—Assumpsit for freight due on a charter-party. Pleas, non-assumpsit, and the bankruptcy of the plaintiffs. Replication to the latter plea, that the plaintiffs, before their bankruptcy, were indebted to D. & Co., and by an order indorsed on the charter-party, requested the defendants to pay D. & Co. all sums which should become due on the charter-party; that the charter-party, with the order indorsed, was delivered to D. & Co.; and that the defendants had notice of the order. The rejoinder traversed the notice. It appeared that the plaintiffs, having offered their ship to the defendants on charter, at 16s. per ton per month, the latter objected, on the ground that the ship was too large. Whereupon the plaintiffs offered to take half the ship, on adventure, in partnership with the defendants. It was thereupon arranged that a charter-party in the usual form, should be executed by the plaintiffs and defendants, and that an agreement as to the adventure should be signed by A., the plaintiff's clerk, as their agent, and a memorandum of guarantee should be signed by the plaintiffs. The agreement stated, that the trading, cargo, &c., should be upon the joint account and risk of the defend-

ants and *A.*; and that, after payment or deduction of the freight, the profit or loss should be borne, and received or paid, by the parties in equal moieties. The plaintiffs, by their memorandum, guaranteed *A.* from all losses and expenses happening in the course of such trading. The plaintiffs, being indebted to *D. & Co.*, in a large sum of money, subsequently deposited the charter-party with them as a security, with an indorsement upon it, directed to the defendants, requiring them to pay the amount due to *D. & Co.* Notice of this was afterwards given to the defendants. The plaintiffs subsequently became bankrupts, and assignees were appointed. The present action was brought by *D. & Co.*, in the names of the bankrupts, to recover the freight due under the charter-party.

*Held*, 1st, that upon the true construction of the documents, the defendants were bound, in the first instance, to pay the freight to the plaintiffs; and that, on the final settlement of the accounts, the profit or loss were to be borne by the parties in equal proportions.

2ndly, That the transaction amounted to an absolute assignment to *D. & Co.* of the plaintiffs' interest in the freight, so as to prevent it vesting in their assignees, and that the plaintiffs were entitled to recover as trustees for *D. & Co.* *Boyd v. Mangles*, 3 Exch. R. 387.

#### INSURANCE.

1. *Lien on cargo for salvage paid by ship-owner.—Description in policy.*—A vessel, the *J. A.*, with cargo on board, abandoned by her crew at sea, was brought into harbour by salvors. Plaintiff, who was owner of the *J. A.*, applied to the Court of Admiralty, and obtained possession of the ship and cargo on entering into recognizance as a security for the whole salvage; and he effected an insurance intended to cover the proportion of the salvage he might have to pay under the recognizance. In the policy, the subject-matter of insurance was described as "average expenses per *J. A.*" The vessel then sailed and was totally lost with the cargo on board. Plaintiff was obliged to pay the amount of his recognizance: *Held*, in an action against the underwriters,

1. That the cargo was liable to contribute a rateable portion of the salvage; and that the plaintiff, who had become liable to pay the whole salvage, had a lien on the cargo for that rateable portion, and had consequently an insurable interest in the cargo.

2. That, in the policy, the description of the subject-matter as average expenses was sufficient. *Briggs v. Merchant Traders' Association*, 13 Q. B. 167.

Cases cited in the judgment: *Cox v. May*, 4 M. & S. 159; *Scaife v. Tobin*, 3 B. & Ad. 528.

2. *Total loss, actual or constructive.—Notice of abandonment.—Injury ascertained after expiration of time policy.—Merger of partial loss.*—A ship, insured in 1,000*l.* for a year, ending 23rd September, was stranded, got off, and brought into the harbour of Santa Cruz, on September 16th. She remained there with her

crew on board till the middle of October, and, during that time, was pumped; and her cargo was discharged into other vessels. Being then beached and surveyed, she was found so much damaged by the accident that the necessary repairs could not be done at Santa Cruz, there being no dockyard, workmen, or materials there; nor could she be taken to any port where she could prudently have been repaired. Afterwards, in October, the master (who was a part owner and interested in the policy), sold her for the benefit of those whom it might concern; and she fetched 72*l.* No notice of abandonment was given. A special case in an action against the underwriters, set forth these facts, stating also that the vessel "received her death blow" by the said perils of the seas on September 16th, but that the damage was not ascertained till the 24th: *Held*,

1. That the sale by the master did not, nor did the other facts, constitute an actual total loss; and that, if there was a constructive total loss which would have entitled the assured to abandon, they could not recover such loss, not having given notice of abandonment.

2. That the assured were entitled to recover for partial loss by the stranding before September 23rd, though the loss was not ascertained till after that day; the proximate cause of loss, the injury by stranding, having taken place during the year covered by the insurance.

3. That the ultimate loss did not prevent such recovery; for that the partial loss by stranding caused an actual prejudice to the assured, which was not merged in the final loss resulting from the sale, even assuming this to have been a total loss necessarily consequent upon the stranding; the loss being one which, as total, the insurers were not liable to pay for. *Knight v. Faith*, 15 Q. B. 649.

Cases cited in the judgment: *The Fanny and Elmira*, *Edward's Adm. Rep.* 117; *Idle v. Royal Exchange Assurance Company*, 8 Taunt. 755; *Robertson v. Clarke*, 1 Bing. 445; *Hayman v. Molton*, 5 Esp., N. P. C. 65; *Read v. Bonham*, 3 Brod. & B. 147; *Martin v. Crokatt*, 14 East, 465; *Cambridge v. Anderton*, 2 B. & C. 691; *Roux v. Salvador*, 3 New Ca. 266; *Benson v. Chapman*, 6 M. & G. 792, 810; 5 C. B. 330; 2 H. of L. 696; *Fleming v. Smith*, 1 H. of L. 5 B. 513; *Stewart v. Greenock Marine Insurance Company*, 2 H. of L. 159; *Davidson v. Case*, 2 Brod. & B. 379; 5 M. & S. 79.

3. *Implied warranty of seaworthiness on a time policy.—From what time the warranty operates.—Pleading denial of seaworthiness.*—*Held*, by the Court of Queen's Bench, that, on insurance of a ship, there is no difference, as to the implied warranty of seaworthiness, between a time policy and a policy on voyage; and that, in the case of a time policy, the warranty takes effect from the time named in the policy for commencing the risk, wherever the ship may be, or however situated; and therefore that, if, at the time fixed for commencing the risk, the ship is at sea, the assured warrants that she is then fit for sea.

*Held*, by the Court of Exchequer Chamber, reversing the judgment of the Queen's Bench, that, on a time policy, there is not an implied warranty that the ship is seaworthy wherever she may be, or however situated, at the commencement of the risk; but only that she is seaworthy so far as the assured could provide for her being so when the risk commenced: *e.g.*, if she was in a port at the time, that she was in a proper condition for such a port; if at sea, that she was seaworthy when the particular voyage commenced. The term "seaworthy," in a policy for time, as in a voyage policy, implying not necessarily fitness to go to sea, but fitness to encounter the hazards of the situation in which she is placed when the risk attaches.

*Held*, by both Courts (after verdict for defendant), a good plea to a declaration on a time policy that the ship was not "seaworthy" at the time when the condition of seaworthiness attached (assuming such time to be properly pointed out): the term "seaworthy" being sufficiently definite, though it admits of a modified application according to the situation of the ship at the time in question. *Small v. Gibson*, 16 Q. B. 128; *Same v. Same*, *ib.* 141.

4. *Waste silk.—Damage by sea-water.—Sale by master.—Total loss.*—The plaintiff insured certain bales of waste silk, from Leghorn to Liverpool, with the usual memorandum, declaring silk free from average, unless general, or the ship should be stranded. The vessel, being compelled by stress of weather to put into Gibraltar, was there repaired, her cargo being necessarily unloaded. Some of the bales of silk were found to be considerably damaged by sea-water, and were consequently sold at Gibraltar by the master, in the exercise of what the jury found to be a reasonable discretion, and such as a prudent owner uninsured would have exercised. But the silk might at a reasonable or moderate expense have been put in a condition to be brought home by another vessel; and it was in fact brought to England, and sold as silk, though in a very deteriorated state; *Held*, that this was not a total loss; and, consequently, that the assured was not entitled to recover. *Navone v. Haddon*, 9 C. B. 30.

5. *Free of particular average.—Total loss.*—Upon a policy on goods free from particular average, no damage short of the absolute destruction of the thing insured, will amount to a total loss. *Navone v. Haddon*, 9 C. B. 30.

Cases cited in the judgment: *Anderson v. Wallis*, 3 Campb. 440; 2 M. & S. 240; *Hunt v. Royal Exchange Assurance Company*, 5 M. & Sel. 47.

6. *Claim of total loss on a policy on freight, the ship not being lost.—Distinction between case where ship cannot be repaired except by an outlay exceeding value of ship when repaired, and a case where the repairs, though exceeding the amount of freight, or less than the value of the repaired ship.*—A ship, valued at 12,000*l.*, was insured from Valparaiso to England; the

freight, valued at 4,000*l.*, was also insured by a separate policy: the ship, having sailed with a full cargo, consisting of 800 tons of merchandise, was compelled, by stress of weather, to put back to Valparaiso, where the master, finding, upon survey, that, to repair her so as to enable her to bring home the entire cargo, would cost a sum exceeding the value of the freight, though less than the value of the ship when repaired, sold her: *Held*, not a total loss of either ship or freight. *Moss v. Smith*, 9 C. B. 94.

Cases cited in the judgment: *Camden v. Anderson*, 5 T. R. 709; 6 T. R. 723; 1 B. & P. 372; *Morrison v. Parsons*, 2 Taunt. 407.

7. *Total or partial loss.—Damage to cargo*—As a general rule, where the whole or any part of a cargo (having suffered sea damage) is practically capable of being sent in a marketable state to its port of destination, the master cannot sell, nor can the assured recover as for a total loss.

If the damage cannot be repaired without laying out more money than the thing is worth, the reparation is impracticable, and therefore, as between the underwriters and the assured, impossible; if it can, the cargo is then practically capable of being sent in a marketable state to its port of destination, the master cannot sell it, and the assured cannot recover as for a constructive total loss. The same rule applies, if a part only of the cargo can be saved. *Rosetto v. Gurney*, 11 C. B. 176.

Cases cited in the judgment: *Hills v. London Assurance Company*, 5 M. & W. 569; *Moss v. Smith*, 9 C. B. 94; *Parry v. Aberdeen*, 9 B. & C. 411; *Roux v. Salvador*, 3 N. C. 266; 4 M. & R. 343; 4 Scott, 1; *Shipton v. Thornton*, 9 A. & E. 314; 1 P. & D. 216.

8. *Damage to cargo.—Total or partial loss.—Practicableness of sending cargo to port of destination, how calculated.—Salvage.*—A cargo, consisting of 3,700 quarters of wheat, valued at 6,400*l.*, was insured on a voyage from Odessa to Liverpool. Shortly after she sailed, the vessel received sea damage, and was compelled to put back to refit. The repairs and expenses amounted to 1,800*l.*, to raise which the master hypothecated the ship and cargo for 1,850*l.* by a bottomry bond payable 10 days after her arrival at the port of delivery. The ship again sailed, and, before her arrival, was wrecked and carried into Court by salvors, where, the cargo being found to be considerably damaged, and the vessel not worth repairing, both were sold.

The jury found that about half of the wheat might have been dried and conveyed from Cork to Liverpool, at a cost less than its value on its arrival at Liverpool.

The vessel and cargo were taken possession of by the Court of Admiralty (who directed their sale), by whom 450*l.* and costs were awarded to the salvors, and 1,881*l.* and costs to the holders of the bottomry bond.

*Held*, that the evidence disclosed a partial loss only; that, in ascertaining whether or not

it was practicable to send the whole or any part of the cargo to its port of destination in a marketable state, the jury were bound to take into consideration the cost of unshipping the cargo, the cost of drying and warehousing it, the cost of transshipping it into a new bottom, and the cost of the difference of transit, if it could only be effected at a higher than the original rate of freight,—adding the salvage allowed in proportion to the value of the cargo saved, but not the debt and costs paid to the holders of the bottomry bond; and that the loss would be total or partial, as the aggregate of these exceeded or fell short of the value of the cargo when delivered at the port of discharge. *Rosetto v. Gurney*, 11 C. B. 176.

9. *Conditions precedent.*—A declaration on a policy of insurance stated, that the policy was duly made by the plaintiff and the defendants, whereby the latter insured the plaintiff's vessel for a twelvemonth (setting out the terms of the policy containing certain warranties). The declaration then stated, that at the time of the making of the policy, and of the defendant's promise thereafter-mentioned, the defendants were used and accustomed to allow to all persons insuring ships with them for the period of 12 calendar months, to take their vessels off risk for any one or more entire month or months for which such vessels were insured, and upon giving notice thereof to the insured, to consider such vessels as off risk, and not subject to any of the terms of such policies until such vessel were again taken upon risk, and notice thereof given to the defendants, and to make a return to the persons so insured of part of the premium during each of such entire month or months. The declaration then averred, that the plaintiff had notice of the custom; that the vessel was taken off risk for a month, and that the plaintiff had claimed the sum of 3*l.* 12*s.* as a return of the premium; and that it was then agreed between the plaintiff and defendants, that that sum should be accepted in discharge of the claim, and that the vessel should be considered as again on risk for the residue of the twelvemonth, and that the policy should continue in full force for the unexpired residue of such period. The declaration then contained an averment of mutual promises, that the vessel was again on risk, and that, during the residue of such period, she was wholly lost. There were then averments of compliance with the warranties by the plaintiff during the continuance of the policy and after the vessel was again on risk: *Held*, that the declaration was bad in substance for not alleging a compliance with the warranties during the whole period the vessel was on risk, for that, either the vessel was on risk again under the original contract, or upon a new agreement: in which latter case, the agreement was void for want of a sufficient consideration. *Hutchinson v. Read*, 4 Exch. R. 761.

#### MASTER'S AUTHORITY TO HYPOTHECATE, &c.

1. *To hypothecate.*—*Insurable interest.*—

*Advances for repairs.*—The master of a vessel has no authority to hypothecate for money borrowed at a foreign port for necessary repairs and disbursements, and at the same time pledge the personal credit of his owner for such advances, whether maritime interest be stipulated for or not.

A vessel having put into a foreign port in a damaged state, the master borrowed money of a merchant there, for necessary repairs and disbursements, to secure which he drew bills upon his owner, and also executed an instrument which purported to be an hypothecation of the ship, cargo, and freight. By this instrument, the merchant who advanced the money forbore all interest beyond the amount necessary to insure the ship to cover the advances; and the master took upon himself and his owner the risk of the voyage, making the money payable at all events, and subjecting the ship to seizure and sale by virtue of process "out of her Majesty's High Court of Admiralty of England, or any Court of Vice-Admiralty possessing jurisdiction at the port at which the said vessel might at any time happen to be lying, or to be, according to the maritime law and custom of England," in the event of the bills being refused acceptance, or being dishonoured.

*Held*, that, this not being such an hypothecation as could be enforced in the Court of Admiralty,—the payment of the money borrowed not being made to depend upon the arrival of the vessel,—the merchant had no insurable interest in the ship. *Stainbank v. Fenning*, 11 C. B. 51.

Cases cited in the judgment: *The Atlas*, 1 Hag. Adm. Rep. 48; *The Emancipation*, 1 W. Rob. Adm. Cas. 124; *The Augusta*, 1 Dodson, Adm. Rep. 283.

2. *Liability of shipowner for goods supplied at foreign port.*—*Necessaries.*—*Onus of proof.*—In an action against a shipowner for goods supplied and money lent to the master at a foreign port, the onus is on the plaintiff to prove that the goods and moneys supplied were necessary. *Mackintosh v. Mitcheson*, 4 Exch. R. 175.

#### SEAMEN'S ACT.

1. *Penalties.*—*Trade.*—*Navigation.*—The Merchant Seamen's Act, 7 & 8 Vict. c. 112, is an Act relating to trade or navigation, and therefore all penalties recovered under it are payable to the Merchant Seamen's Society, as being within the proviso of the 5 & 6 Wm. 4. c. 176, which disentitles certain boroughs to penalties recovered under any Act, "relating to the Customs, Excise, and Post Office, or to trade or navigation." *Seamen's Hospital Society v. Mayor of Liverpool*, 4 Exch. R. 180.

2. *Summary proceeding by administrator.*—Under the 7 & 8 Vict. c. 112, s. 15, a justice of the peace is not authorised to act upon the personal application of the administrator of a seaman, but only upon the application of the seaman himself. *Hollingworth v. Palmer*, 4 Exch. R. 267.

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## PROFESSIONAL FEES IN THE COUNTY COURTS.

It was announced in these pages, some weeks since, that the Committee of County Court Judges had settled a Scale of Fees to be paid to attorneys in the County Courts, which was submitted to certain of the Judges of the Superior Courts of Common Law for their sanction, pursuant to the provisions of the Act 15 & 16 Vict. c. 54, and that the latter, dissenting from the principle upon which the New Scale was framed, declined to affix their signatures in testimony of approval.

Participating in the sentiments of those who consider that the amount of professional remuneration should not needlessly be made the topic of public discussion, we abstained from all reference to the grounds upon which it was understood the learned Judges of the Superior Courts arrived at the conclusion that the Scale of Fees proposed to be allowed as between attorney and client and as between party and party, in the County Courts, was too high. As it now appears that the difference of opinion between those who framed the Scale and those who have disallowed it, is altogether irreconcilable and may probably become the subject of Parliamentary notice, it is only fitting that those whose function it is to advise suitors in the choice of a tribunal should understand the bearing and merits of the question in dispute. As already intimated, the reference to the Judges of the Superior Courts to sanction a New Scale of Professional Fees in the County Courts is made necessary by the 1st section of the Act of last Session, to facilitate and arrange proceedings in the County Courts, which is in these terms:—

“That it shall be lawful for the Lord Chancellor from time to time to appoint five of the  
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Judges of the Courts holden under the Act of the 9th and 10th years of her Majesty, c. 95, intituled ‘An Act for the more easy Recovery of Small Debts and Demands in England,’ from time to time to frame a scale of costs and charges to be paid to attorneys in the County Courts, to be allowed as between attorney and client and as between party and party; and such scale of costs and charges as shall be certified to the Lord Chancellor under the hands of the Judges so appointed or authorised or any three of them, shall be submitted by the Lord Chancellor to three or more Judges of the Superior Courts of Common Law at Westminster, of whom the Chief Justice of the Court of Queen’s Bench or Common Pleas, or the Chief Baron of the Court of Exchequer, shall be one, and such Judges of the Superior Courts may approve or disallow, or alter or amend such scale of costs and charges, and the scale of costs and charges so approved, altered, or amended, shall from and after a day to be named by such last-mentioned Judges be in force in every County Court; and all costs between party and party and attorney and client shall be taxed by the clerk of the Court; but his taxation may be reviewed by the Judge upon the application of either party; and in no case upon the taxation of the costs between attorney and client, shall any charges be allowed not sanctioned by the aforesaid scale, unless the clerk is satisfied by writing under the hand of the client that he has agreed to pay such further charges, and no attorney shall have a right to recover at law from his client any costs or charges not so allowed on taxation; and the Judges of the County Courts so appointed shall possess the same power of making rules for regulating the practice of the Courts, and of settling doubts on the construction of any acts relating to County Courts, as were conferred on the Judges to be appointed by the Lord Chancellor for that purpose by the 12th section of the 12 & 13 Vict. c. 101, unless otherwise specially provided.”

It is clear that the Legislature reposed confidence—not wholly in the five County Court Judges who were to frame the Scale—but subjected the Scale to the revision of

three or more of the Judges of the Superior Courts, who may "approve, disallow, alter, or amend such Scale;" and whatever may be thought of the expediency of the course pursued by the Judges to whom the matter was submitted by the Lord Chancellor, in disallowing the Scale framed by the County Court Judges, it is impossible not to admit that, under the terms of the Act of Parliament, they were bound to exercise a judicial discretion, and that their duty was not merely administrative, like a magistrate's allowance to a parish rate.

The avowed object of the County Court Judges in settling the Scale of Costs now under consideration was, to encourage the attendance of a better class of practitioners in those Courts by affording them a reasonable but liberal compensation for professional services. Although many thousand cases were annually disposed of in the County Courts, and attorneys of unquestionable respectability occasionally attended, the scale of professional remuneration adopted under the earlier Acts tended to throw the business of these Courts, to a great degree, into the hands of those not altogether deserving of the confidence of the public; and now that the Legislature has thought fit to extend the jurisdiction of the County Courts, it is felt that the discouragement given to the better class of attorneys, and their habitual avoidance of the County Courts, diminishes the efficiency of those tribunals and threatens their future popularity. If professional men of respectability could be induced regularly to attend the County Courts, there is no doubt that the character of the Court would be elevated, and the position of the presiding Judge rendered less irksome and in all respects more satisfactory. It is not wonderful, therefore, that the County Court Judges should have come to the conclusion that the public interests will be best promoted by ceasing to discourage the attendance of respectable professional men.

On the other hand, we can readily understand that the Judges of the Superior Courts, whose assent the Legislature has declared to be indispensable, should feel that the question is not to be regarded as if the County Courts were the only tribunals established for the assertion of legal rights or the recovery of demands, and that it is objectionable and inconsistent that in Courts founded for "the more easy recovery of *Small Debts and Demands*," a higher scale of professional remuneration should exist than is now maintained in the

Superior Courts of Law. The consequence apprehended by the Judges, if this new Scale were adopted is, that the public would, in some sense, be deprived of the benefits which the Legislature intended by the creation of cheap and inexpensive Courts of subordinate jurisdiction.

Repeating the proposition,—often unnecessarily stated in these pages,—that it is mainly and pre-eminently for the benefit of the suitor, that the practitioners in every Court should be adequately recompensed for the services performed by them; we cannot overlook the fact, that the present controversy is amongst the first fruits of that anomalous system under which one class of tribunals was set up in rivalry to another. As the County Court Judges are placed in a position of greater independence, they naturally desire to increase the dignity and importance of their own Courts, and may be excused for hoping that these institutions may not always be deemed subordinate.

In the present case, as the Common Law Judges have authority to "alter or amend," as well as to disapprove of, the Scale of Costs submitted to them, we take it for granted that the Scale will be altered so as to meet the approval of those who disapproved of it in its original shape, and that the altered and reduced Scale will shortly be promulgated.

We have no doubt that 90 cases, at least, out of every 100 could be conducted at less expense in the Superior than the Inferior Courts, and with more satisfaction to the suitors, because they would act by their attorneys instead of attending personally, losing their time, and neglecting their affairs. Indeed, the jurisdiction of the Superior Courts concurrently with the County Courts should be reduced; and probably this will be effected when the subject next comes before Parliament. For the recovery of small debts (as in the late Courts of Request) and the trial of disputed questions of small amount, the County Courts may be generally useful; and there can be no doubt that such were the original objects of the Legislature in reviving the "*Small Debt Courts*."

## CONCLUSION OF HILARY TERM.

### BUSINESS OF THE COURTS.

THE Term closed on Monday last, and justified the anticipations with which its commencement was announced.

The Lord Chancellor and the Lords Jus-

tices sat together at Lincoln's Inn during a great part of the Term, in conformity with what Lord Cranworth conceives to be the intention of the Legislature when creating the Court of Appeal in Chancery, under the Act 14 & 15 Vict., c. 83.

The Lord Chancellor will be more fully occupied when Parliament re-assembles, and he is called upon to preside over the judicial deliberations of the House of Lords. Perhaps the history of the Great Seal affords no modern instance where its holder was so little pressed with judicial duties, original or appellate, as in the Term which has just passed.

The Master of the Rolls and the Vice-Chancellors respectively, have been fully employed during the Term, at the conclusion of which the public sittings were adjourned for a week, in order to enable the judges to work out their causes at Chambers, a branch of the business of the Court of Chancery which, under the new system, is hardly inferior in importance to that transacted in open court. The various branches of the Court of Chancery resume their public sittings on Monday next.

The Common Law Courts presented a remarkable contrast to the Courts of Equity. If it had not been for the stimulant to public curiosity created by the application for a new trial in the case of "*Achilli v. Newman*," in the Queen's Bench, followed by the judgment upon the reverend defendant, the benches of the Courts of Westminster Hall would have been all but deserted on those days on which the Courts did not hold any sittings at *Nisi Prius*. During every portion of the Term, from its commencement to the close, the decline of what was emphatically called "Term business," has been too remarkable to admit of any doubt; and this branch of business may be expected still further to decline, as the questions arising upon the New Procedure Act, and the code of Rules and Orders founded upon it, become settled by judicial decisions. Considering the nature, variety, and extent of the changes introduced in practice, the doubtful points submitted to the Courts of Law hitherto have neither been numerous nor important.

The state of business in Term has enabled the Judges to hold their sittings in Error in the Exchequer Chamber during the Term, instead of postponing those sittings until after Term, in accordance with the practice which has uniformly prevailed for several years past. The appeals from the County Courts, which heretofore formed

part of the after Term business, have also been incorporated with the ordinary proceedings of the Term, and the New Rules and Orders direct that those cases shall be entered in the special paper, and called on in the regular order with demurrers and special cases. The new arrangements appear to be directed to the object of affording the Courts sufficient employment during the continuance of the Term, so as to enable the Judges to enjoy more leisure in the intervals between the Terms. It is not considered improbable that the surplus time of the Common Law Judges may be employed by increasing the number of circuits, or, in other words, by establishing a winter circuit for the trial of civil causes. We have reason to think that there is at present no intention, on the part of those in authority, to diminish the number or reduce the judicial strength of the Common Law Courts.

It may be observed too, that the *Nisi Prius* sittings do not exhibit the same decline of business which is noticed when the Courts sit in *Banco*. The entries of causes for trial in Middlesex, during the sittings now in progress are not materially under the average number exhibited at any time since the County Courts Act came into operation, and we have reason to know that the Judges sitting at Chambers have been fully occupied. The operation of the recent changes has been to put an end to the interlocutory arguments and applications which employed so much of the time of the Courts sitting in *Banco*; but there are encouraging evidences that for the trial of contested facts, suitors still prefer the ancient tribunal of a jury, presided over and directed by Judges of eminent learning, character, and experience.

## LAW OF ATTORNEYS.

### PRIVILEGED COMMUNICATION.—SECONDARY EVIDENCE.—NOTICE TO PRODUCE DOCUMENTS.

THOUGH an attorney cannot give evidence of any communication made to him by his client, the privilege does not extend to matters of fact which have come to the attorney's knowledge by other means than by confidential communication with his client. And if a document be in Court in the possession of the attorney, and he refuses to produce it, secondary evidence may be given of its contents, though no notice to produce the original had been served.

In a case recently reported, where an



action had been brought by the indorsee against the acceptor of a bill of exchange, to which the defendant pleaded that the bill was given for a gaming debt, the defendant, on the trial, gave evidence of the gaming, and swore that the only bill he ever gave to the drawer was by way of payment of the debt then incurred. Being required to prove that the identical bill declared upon, was that which was given on that occasion, the defendant called as a witness the plaintiff's attorney, and asked him whether he had the bill with him. The plaintiff's counsel objected, that such a question need not be answered, as it would be a breach of professional confidence to do so. The Lord Chief Baron, before whom the cause was tried, after consulting some of the other Judges at that time sitting in the Exchequer Chamber, decided that the question must be answered. The attorney having admitted that the bill was in Court, but refused to produce it, the defendant offered to give secondary evidence of its contents. The plaintiff's counsel objected, that there ought to have been a previous notice to produce; and the Lord Chief Baron, after consulting the same Judges, ruled in favour of the defendant. The evidence was then given, and a verdict passed for the defendant, the Judge reserving leave to the plaintiff's counsel to move to enter a verdict on the points made at the trial.

The judgment of the Court on the motion to set aside the verdict was delivered by Mr. Baron Parke, and we extract so much as relates to the question of the attorney's privilege:—

“There are two questions to be considered,—

“1st, Whether the plaintiff's attorney was protected from answering the simple question, as to the bill being in his possession and in Court.

“2ndly, Whether, on his refusal, it was competent for the defendant to give secondary evidence of its contents, no previous notice to produce having been given.

“We are of opinion that the ruling of my Lord Chief Baron was right on both questions. The relation of attorney and client prevents the former from disclosing any communication made to him in the ordinary course of his employment, and on the faith of the confidence which the client reposes in his legal adviser. But the privilege does not extend to matters of fact which the attorney knows by any other means than confidential communication with his client, though, if he had not been employed as attorney, he probably would not have known them. Thus, he may prove the client's swearing to the truth of an answer in Chancery, and

his handwriting, by seeing it in documents prepared by him in the name of his employer; in the same way he may prove the fact that a particular document is then in his possession and in Court—for this is not a fact professionally communicated to him; though, of course, he could not be compelled to disclose the contents of any document which is professionally intrusted to him, and which he is acquainted with only by virtue of professional confidence.

“That the privilege of an attorney does not extend to protect him from answering whether the document is then in Court, was decided by *Best, C. J.*, at Nisi Prius, in *Bevan v. Waters*, 1 Moo. & M. 235. In *Eicke v. Nokes*, ib. 303, Lord Tenterden permitted a clerk of the defendant's attorney to be asked, whether a copy of a bill had not been given to him by the defendant; and the Court of Queen's Bench decided, in the case of *Coates v. Birch*, 2 Q. B. 252, that an attorney might be asked whether he had then in his possession, on the trial and in Court, a warrant, though he said he had no documents which he had not received from his client in the course of their professional communications. These authorities are quite satisfactory to us; for it is obvious that the answer to the question betrays no secret, directly or indirectly communicated to him in professional confidence. On the other hand, some authorities were cited against the admissibility of this question. The first is *Cook v. Hewn*, 1 Moo. & R. 201, in which it is said that *Patteson, J.*, refused to permit the question to be put with respect to a rule of Court, because ‘no notice to produce had been given;’ and he also decided, that a notice to produce *then* was too late; and the report goes on to state that the course adopted was approved of by *Tamton, J.*, and myself, in the following Term. It is very doubtful from the report, whether the question was disallowed by *Patteson, J.*; and, so far as I am concerned, I think there must be a mistake, either of my own, or the reporters, as it is at variance with the opinion I have always had on that point; and on referring to my MS. note of the motion for a new trial in *Michaelmas Term, 1832*, I find no trace of such a circumstance. The rule was moved for on the ground that it appeared on the cross-examination of the plaintiff's witness, that there was a written agreement or lease, which was not produced, and the rule nisi was granted, suggesting a *vel processus*. This case is by no means a sufficient authority, and no other was cited which is in point, nor are we aware of any. This objection cannot therefore prevail.

“The next question is, whether, the bill being admitted to be in Court, parol evidence was admissible on its non-production by the attorney on demand, or whether a previous notice to produce was necessary. On principle the answer must depend on the reason why notice to produce is required. If it be to give his opponent notice that such a document will be used by a party to the cause, so that he may be enabled to prepare evidence to explain or

confirm it, then, no doubt, a notice at the trial, though the document be in Court, is too late. But if it be merely to enable the party to have the document in Court, to produce it if he likes, and if he does not, to enable the opponent to give parol evidence;—if it be merely to exclude the argument that the opponent has not taken all reasonable means to procure the original, which he must do before he can be permitted to make use of secondary evidence, then the demand of production at the trial is sufficient. We are not able to find a trace of the reason suggested on the part of the plaintiff, until it is mentioned by Mr. Starkey, in his book on Evidence, and afterwards by Mr. Taylor, in his. There is no satisfactory authority which appears to us to support such a position. If this be the principle on which notice to produce is required, it is a solitary instance, we believe, in the law, prior to the New Rules, of its being necessary for one party to give notice of the evidence which the other means to adduce against him. If this be the true reason, the measure of the reasonable length of notice would not be the time necessary to procure the document, a comparatively simple inquiry, but the time necessary to procure evidence to explain or support it, a very complicated one, depending on the nature of the plaintiff's case, and the document itself and its bearing on the cause; and in practice such matters have never been inquired into, but only the time, with reference to the custody of the document, and the residence and convenience of the party to whom notice has been given, and the like. We think that the plaintiff's alleged principle is not the true one on which notice to produce is required, but that is merely to give a sufficient opportunity to the opposite party to produce it, and thereby to secure, if he pleases, the best evidence of the contents; and a request to produce immediately is quite sufficient for that purpose, if it be in Court. With this view the opinion of our brother Alderson accords, as reported in *Lawrence v. Clark*, 14 M. & W. 253. There is no case in support of the plaintiff's position, except that of *Cook v. Hearn*, above referred to, which we think, for the reasons given before, quite insufficient; and a case of *Esall v. Partridge*, said to have been quoted by the late Lord Abinger when at the bar, mentioned in the report of *Doe d. Whartney v. Grey*, 1 Stark, 283, but not reported elsewhere, in which Lord Kenyon is said to have told the attorney that he need not produce the instrument, which had a subscribing witness, unless he had notice in time to enable him to produce the attesting witness. There is probably a mistake in this, as the party requiring the document would have been bound, if it were produced, to call the subscribing witness, unless in the excepted case where the party producing it claimed title under it. This case cannot be relied upon. In the case of *Doe v. Grey* itself, it did not appear that the attorney had received the notice to produce, which the night before was served upon his wife, or had the lease itself in Court

on the trial. Nor does that fact appear in either of the cases of *Read v. Gamble* and *Lawrence v. Clark*, before referred to;—the expression, that the counsel refused to produce, is not equivalent, and the fact is not so proved. We think that the rule must be discharged; and it would be some scandal to the administration of the law if the plaintiff's objection had prevailed." *Dwyer v. Collins*, 7 Exch. 639.

## NOTICES OF NEW BOOKS.

*Forms of Declarations, Pleadings, and other Proceedings in the Superior Courts of Common Law; with the Common Law Procedure Act, 1852, and the New Rules of Practice of Hilary Term, 1853; With Notes.* By HENRY GREENING, Esq., Special Pleader. Second Edition. London: Butterworths. 1853. Pp. 280.

MR. GREENING's object in this Volume is stated in the following extract from his Preface:—

"In consequence of the promulgation of the recent Rules of Practice, the Author has been induced to publish a new edition of this work, comprising such Rules; although he has great satisfaction in informing the Profession that there is nothing whatever in these Rules which in any way affects the Forms previously published, and which may be as safely used now as before the Rules were promulgated.

"The work in its present shape, comprising, as it does, almost all common forms of pleadings and proceedings in the various actions in the Superior Courts of Common Law, as well as the Statutes and Rules by which the practice of these Courts is regulated, must necessarily be a work of great utility to the practitioner, though of little if any merit to the Author.

"Two Statutes of frequent reference, relating to Costs, Notices of Action, and the General Issue 'by Statute,' have also been included in this edition, as well as the Table of Officers' Fees.

"The intention of the present edition is to supply a temporary deficiency in the books of practice published before the New Rules were promulgated, and which are now in a great measure rendered useless, as all the written Rules of practice referred to in those works are annulled.

"The new matter has been published as a Supplement to the former edition, so as to enable the purchasers of that work to have the full benefit of the present edition at a little expense."

By the Author's Table of the Contents of his Work, it appears that, although great alterations have been made in the Practice of the Court, the Science of Pleading is in no considerable degree al-

tered or abolished by the Common Law Procedure Act of 1852.

The first part of the Book comprises writs of summons, appearance, particulars of demand, and judgment for want of appearance.

The second contains the commencements and conclusions of declarations.

The third part gives counts on contracts:—1. The common counts. 2. Counts in actions at the suit of or against persons in particular characters. 3. & 4. On promissory Notes. 5, 6, & 7. On bills of exchange. 8. Counts for wrongs independent of contract.

Then the fourth part comprises:—1. Of the language and form of pleading in general. 2. Pleas in actions on contract. 3. Pleas in actions for wrongs independent of contract. 4. Defences arising after the commencement of the action. 5. Replications. 6. New assignment. 7. Rejoinder. 8. Demurrers. 9. Proceedings in error. 10. Ejectment. 11. Special case. 12. Revival of judgments and proceedings against persons not parties to the record. 13. Proceedings in case of death, marriage, or bankruptcy of parties.

The Appendix contains the Common Law Procedure Act, 1852; the Frivolous Actions Act, 3 & 4 Vict. c. 24; the Double Costs and Notice of Actions' Act, 5 & 6 Vict. c. 97; the Table of Common Law Office Fees; and the Practice Rules of Hilary Term, 1853.

It will be recollected, however, that New Rules of Pleading have been under the consideration of the Judges for several weeks, and it is expected that they will be laid before the Houses of Parliament at the commencement of the adjourned Sessions. A Supplement, containing the Rules of Pleading, will, we presume, be published in due time by the learned Author.

#### REMUNERATION TO SOLICITORS IN SCOTLAND.

1. FEES allowed for drawing deeds, obligations, indentures, and other writings *not chargeable ad valorem*, inventories relative to such deeds, &c.:—

"If in the English language, first sheet of 250 words 10s., each other sheet 6s.

"If in Latin, first sheet 20s., each other sheet 12s.

"Going through and arranging title deeds to be charged in complex cases according to the time occupied (at 6s. 8d. per hour) besides the fees for drawing the inventories.

"Copying papers 1s. for each sheet of 250 words. *Engrossing*, first sheet 2s. 6d., each other 1s. 6d."

Memorials, cases, inventories, and other papers not chargeable as deeds are:—

"For the first sheet of 250 words 6s., and each other 4s."

2. Fees allowed relating to the sale of *heritable property*:—

*Articles of Rowp*—charged according to length (6s. for first 250 words, 4s. each other).

*Minutes of Sale and Bond for the price*—according to the length. The deed to be drawn by the seller's agent and paid for by the purchaser. (This would be 10s. for first, and 6s. each other sheet of 250 words.)

*Disposition (or Conveyance)*.—To the purchaser's agent, for drawing the deed, and final revision, and adjustment of it, where the price does not exceed 2,000l. for each 100l., or part of 100l., a fee of 10s. 6d. The price exceeding 2,000l., but not exceeding 5,000l., the above rate for the first 2,000l., and for every additional 100l., 5s. 3d. The price exceeding 5,000l., the above rates for the first 5,000l., and for every additional 1,000l., 1l. 11s. 6d., besides regulation fees for drawing the deed according to the length, where the price exceeds 5,000l. To the seller's agent, for revision of the deed and adjustment of it, one half of the above fees *ad valorem* only.

"The purchaser's agent draws the deed. The seller's agent revises it. Both concur in the final revision and adjustment. The *ad valorem* fees payable to the two agents are divisible into three parts, whereof two are paid by the seller, and one by the purchaser. One part is paid by the seller for drawing. Two parts are paid, one by each party, for revision and adjustment. The two parts due by the seller are paid to the purchaser's agent, and the first due by the purchaser is paid to the seller's agent.

"The result is the same as it would be if the seller were to pay the purchaser's agent the fees of drawing, and his own agent the fees of revision and adjustment, and if the purchaser were to pay his own agent the fees of revision and adjustment on his part, but the rule adopted creates two transactions only, instead of three."

3. Fees of grants, original feu-charters, feu-contracts, and building leases:—

"To be charged according to the rate payable to the purchaser's agent in a disposition (*or conveyance*), estimating the price or sum paid (if any), and twenty years' purchase of the feu-duty, as the value of the subjects. In the case of bilateral deeds of this class, the total expense to be equally divided between the parties.

"The superior (or landlord's) agent draws the deed. The vassal (or tenant) pays for it."

For charters by progress and precepts of *clare constat*, where the subject is an *irredeemable* right, the charges are:—

"If the value of the property (estimated at twenty years' purchase of the present rent or feu-duty payable to the guarantee, or of the annual value, if the property be in the natural possession of the grantee) shall not exceed

1,000*l.* the usual *regulation fees*. If it shall exceed 1,000*l.* *one-third* of the fees *ad valorem*, payable to the purchaser's agent in a disposition besides regulation fees according to length. But in properties from 1,000*l.* to 2,000*l.* the total charge shall not exceed 5*l.* 5*s.* And from 2,000*l.* to 3,000*l.* 7*l.* 7*s.*, unless the regulation fees per sheet shall amount to more."

Fees where the subject matter is an adjudication or other redeemable right, the charges are the same as the last preceding.

"But as in the case of adjudications, a large estate may be adjudged for an inconsiderable debt, or a small estate for a large debt, it shall be optional to the creditor, whether the fee shall be calculated on the value of the subject, or the sum in the adjudication. For engrossing in cartulary, 2*s.* 6*d.* per sheet, to be charged in addition to the fees, and to be paid by the vassal.

"The superior's agent draws the deed. The vassal pays for it.

4. The fees of securities for money lent and relative deeds are:—

*Personal Bonds*.—For each 100*l.*, or part of 100*l.*, 10*s.* 6*d.*

*Heritable Bonds*.—The same, adding the regulation fees of drawing the deed according to the length when the loan exceeds 5,000*l.*

*Bonds of Annuity whether personal or heritable*.—The same charge, holding the price paid for the annuity as the amount of the loan.

*Bonds of Corroboration*.—Where additional security is given, whether personal or heritable, or where the interest then due is accumulated with the principal, to be charged at 1*s.* 3*d.* of the fees of a personal bond, upon the sum in the bond of corroboration, besides regulation fees according to the length. Where the bond is merely granted for the purpose of binding the heir of the original debtor, to be charged only at the regulation fees according to the length.

For obtaining the loan of money, the borrower's agent to be paid by his own client, half the sum payable to the lender's agent for preparing the bond, which includes revival of the bond. The whole of these to be written by the agent of the grantee, and paid by the grantor.

*Discharges and renunciations of heritable debts; and discharges of debts constituted by personal bonds, except where the debt is paid by the original borrower to the original lender*:—

"Where the sum is under 500*l.*, regulation fees; where above that sum, double the regulation fees.

"To be written by agent or debtor, and paid by creditor, unless otherwise stipulated.

*Discharges of legacies*.—One-half per cent. of the legacy, if below 200*l.*, if above that sum, one half per cent., for the first 200*l.*, and 1*s.* 4*d.* per cent., for all above.

To be prepared by agent for testator's successors, and paid by the legatee.

*Assignations and translations of personal debts, and conveyances of heritable debts*.—Where the transaction is negotiated as a loan the same fees are chargeable as on an original

bond. Where that is not the case, to be charged as renunciation, &c.

"To be regulation by agent or grantee, and paid for the grantor."

5. Fees on preparing family settlements, viz., deeds of entail, trust depositions, testamentary deeds, and bonds of provision:—

"The regulation fees according to the length of the deed, where the value of the property settled does not exceed 500*l.* double regulation fees where the property exceeds 500*l.*, and does not exceed 2,000*l.*

"In the case of entail and other settlements of landed estates, charges may be made also for attendances and correspondence.

*Marriage Contracts*.—To be charged according to the total amount of the jointure and other income, provided and secured to the wife or husband or both. Where such income does not exceed in the whole 30*l.*, three guineas; 30*l.* to 50*l.* five guineas; 50*l.* to 100*l.*, eight guineas; 100*l.* to 150*l.*, ten guineas; 150*l.* to 200*l.*, twelve guineas; 200*l.* to 250*l.*, fifteen guineas; 250*l.* to 300*l.*, twenty guineas; and for every 100*l.* beyond 300*l.* up to 1000*l.*, five guineas. Beyond 1,000*l.* for every 100*l.*, two guineas and a half, besides the regulation fees of drawing according to the length.

"To be prepared by the agent for the wife, and paid for by the husband."

6. Fees on miscellaneous deeds:—

*Tacks*.—The one duplicate to be charged regulation fees, according to the length; the other *ad valorem*, as follows:—Rent under 100*l.* regulation fees; 100*l.* and not exceeding 200*l.* two guineas; 200*l.* and not exceeding 300*l.* three guineas; and for every additional 100*l.* one guinea.

Always prepared by agent for landlord.

The aggregate of these two fees, and of the stamp duties for both duplicates to be paid equally by the landlord and tenant.

*Contracts of Excambion*.—To be charged as dispositions, holding the value of the lands mutually excambied as the price.

"The deed to be prepared by the agent for the one party and revised by the other, as may be arranged between them. The agent who draws the contract to receive the fees payable in the case of a disposition to the purchaser's agent, and the agent who revises to receive the fees in the case of a disposition to the seller's agent; but the total expense to be equally divided between the parties."

*Contracts of Co-partnery*.—Where the stock is defined, to be charged according to the amount of the stock, as follow:—When the stock is under 500*l.* four guineas; 500*l.* and under 1,000*l.* five guineas; 1,000*l.* and under 2,000*l.* six guineas; 2,000*l.* and under 4,000*l.* seven guineas; 4,000*l.* and under 6,000*l.* eight guineas; 6,000*l.* and under 8,000*l.* nine guineas; 8,000*l.* and under 10,000*l.*, ten guineas; and for every additional 1,000*l.* 10*s.* 6*d.* Where the stock is not defined, the deed to be charged at double regulation fees according to the length.

"The deed to be prepared by the agent of

any partner, as may be agreed on, and the expense divided among the partners according to their interests in the concern."

7. Charges for time occupied in professional business and for correspondence, &c:—

For time employed on business out of Edinburgh, but within Scotland, per day, besides travelling expenses, 3*l.* 3*s.*; for time employed in business in Edinburgh, per day, 2*l.* 2*s.*; for time employed on business in Edinburgh, not exceeding an hour, 6*s.* 8*d.*; for each additional hour after the first, 6*s.* 8*d.*

*Correspondence.*—For writing each letter of an ordinary length, including booking, 3*s.* 4*d.* But for letters which are necessarily longer, an additional charge to be made.

"No letters or attendances chargeable which relate to deeds for which an *ad valorem* charge is allowed, or to transactions for which a factor fee or commission is allowed. But this does not apply to the case where the agent is also a trustee. If he has a commission as a trustee this does not preclude the charge for attendances and correspondence as agent."

*Revising Deeds drawn by others.*—Half of the regulation fees of drawing according to the length.

"To be paid in every case to the agent by his own employer."

Where charges are allowed for drawing of deeds, it is *optional* to the solicitor to charge either the fees *ad valorem* or the fees for drawing, according to the length: but these regulations apply only to cases where there is no *particular stipulation*. It is, of course, competent to the parties to make any arrangement between themselves which they consider more equitable or convenient, according to the circumstances of each case.

As to commissions for selling and purchasing estates, and other money transactions, it has been found impracticable to lay down any general rules. A commission being a remuneration for trouble and responsibility, the rule for determining the amount is the extent of that trouble and responsibility. Thus, in the case of the sale or purchase of an estate, the bargain may be wholly settled by the parties themselves, and the solicitor has only to prepare the necessary deeds. In such a case there is no claim for commission.

8. Fees on *judicial proceedings* in the Court of Session, as regulated by Act of Sederunt:—

"First appearance in each case, for making out and producing a mandate, deducting always in the case of suspensions and advocations, 6*s.* 8*d.*, being the first fee allowed in the Bill Chamber proceedings, 10*s.*

"Drawing memorials, 260 words in a sheet, 6*s.*, every other, 4*s.*

"All necessary copies of papers, per sheet of 260 words, 1*s.*

"Each necessary enrolment by either party, including attendance at the calling of the cause, not exceeding one hour, 6*s.* 8*d.*

"Each necessary attendance on business with a client, or on his account, such as attending a consultation of counsel, &c., not

exceeding one hour, 6*s.* 8*d.* If the attendance has been longer, progressively higher, but in no case to exceed, for a whole day, 2*l.*

"Writing each necessary letter of an ordinary length, including booking, 3*s.* 4*d.* And when the letter necessarily exceeds the above length, to be charged progressively higher, but in no case to exceed the charge for drawing a memorial of the same length, and no letter to be charged unless it has been fully booked.

"For attending the Court according to the time occupied; if not more than four hours, two guineas; from four to six hours, three guineas; and 6*s.* 8*d.* every other hour."

## TAXATION OF COSTS OF REFERENCE TO CONVEYANCING COUNSEL.

### NEW REGULATION.

WE have ascertained that the late Lord Chancellor St. Leonards, on the 24th December, intimated to the Taxing Masters that, in his Lordship's opinion, "where, in pursuance of any direction by the Court or Judge, or of any request by a Master in Ordinary, drafts are settled by any of the Conveyancing Counsel under 15 & 16 Vict. c. 80, s. 41, the expense of procuring such drafts to be previously or subsequently settled by other Counsel is *not to be allowed on taxation*, as between party and party, or as between solicitor and client, unless the Court shall specially direct such allowance. This intimation, however, is not to prevent the allowance of the expense in cases which may have *already* occurred, where, in the judgment of the Taxing Master, there has been a reasonable ground for laying the papers before other Counsel."

It appears clearly to have been the object of Lord St. Leonards in giving this intimation, that the suitors should not be subjected to the payment of fees—1st, to the Counsel chosen by themselves or their solicitors; and 2ndly, to the official Counsel. We presume, therefore, that it will be the duty of the solicitor to ascertain the name of one of the six official Conveyancing Counsel in rotation, and take the papers and instructions, in the first instance, to such Counsel.

### LEGAL EDUCATION.

QUALIFICATIONS OF LAWYERS.—THE BAR AND INNS OF COURT.—THE ATTORNEYS AND THE INCORPORATED LAW SOCIETY.

THE more liberal the terms upon which merit is admitted into the arena of profit and

honour, the more likely is it to be genuine. If we fence around the opportunities to distinction by requiring numerous and severe qualifications from the candidate, in all probability, he will turn aside from the vexatious tests that are applied to him, and devote his talents in some other direction. But if we constitute those qualifications so as to make them at once oppressive and incapable of supplying a just test, we shall, in all probability, lose the men who would shine in the calling thus protected, and gain those of whom, in a little time, we should be very glad to get rid. For instance, it would be madness to place a man in the chair of philosophy because he could play admirably on the flute, or to send another into Parliament because he possessed a pony which could trot 17 miles within the hour—cases which will appear so absurd to our readers, that they ought hardly to be named. But a moment's reflection will show them that they are not a whit more ridiculous than many restrictions sanctioned by our laws and in daily practice. Take, for example, the higher branch of the Legal Profession. The student enters one of the Inns of Court—keeps his terms, which is done by eating a certain number of dinners, and is called to the Bar. He is then privileged to plead causes, to have exclusive audience in the Courts at Westminster, and, through custom, to fill many appointments at home and in the colonies generally given to barristers. That he is fit for these privileges is presumed, from the fact that he has paid a certain number of fees, and eaten a certain number of dinners. We need not say that such tests of capacity are quite as ridiculous as the pony for the seat in Parliament, or the efficiency on the flute for the chair of philosophy.

To the honour of the lower branch of the Profession, they have, for many years, insisted on an examination of the candidate before he is admitted to practise as an Attorney. And though it may be very true that a good many *cram* for that examination—that is read up and fit themselves by mutual examination or by the help of some person already skilled in the Profession, for the scrutiny they are about to undergo—it is impossible to legislate against such a proceeding unless we had some power of estimating the probable permanence of the knowledge with which they have thus been gorged.

It is well known, moreover, that wherever students have to face an examination, this practice more or less prevails, whether amongst candidates for the honours of law, of medicine, of the church, or the university. But though we readily bestow great praise on the Law Institution for the test which they have forced on the Profession, we cannot acquit the body it represents of the same absurdity—to a great extent qualified by the merit we have accorded to them—which has been, and is still, so deep a reproach to the Bar. Here, again, the qualification is a money one; for a student, though he may be able to answer every question in *Maugham*, cannot hope for the reward of his

learning unless he has been able to pay a round sum to the Stamp Office. This, indeed, is not the fault of the Law Institution, and, therefore, the blame must not be laid at its door, unless it should be found willing to maintain the absurdity. The fault is in the law, which, for the purposes of revenue, has opposed a ridiculous obstacle in the path of that portion of our youth which would otherwise desire to promote itself through this path to honour and independence.

Now, to see the hardship and stupidity which mark this restriction, let us put the case of two young men starting in life in an attorney's office. One is the son of a person of means; he is articled to the principal, stamps and fees are paid, and his legal career commences. Do we exaggerate when we say that, in a great majority of cases, the earlier and greater portion of the articled clerk's apprenticeship is spent in the theatre, at the supper table, at the billiard table, at Vauxhall, or over the newspaper and the lightest literature of the day? We should really be delighted to find that this is not the case,—that *Blackstone* and *Archbold* are much preferred to *Bleak House* and *Punch*, and the midnight lamp to the midnight lamp-post. But take the other case. A poor lad enters the office as an engrossing clerk, at a salary of a few shillings a-week. He is intelligent, well-behaved, and industrious. By careful observation he picks up a bit of law here and there; he reads the opinions of counsel; perhaps, during a slack time he turns over a chapter of *Blackstone*, or dips into a book of reports. Of course, cases of this kind are rare ones, but for that very reason they ought to be rewarded. At the end of the five years' apprenticeship, have there not been cases in which the salaried clerk has gained more knowledge of law than the apprentice? It is from the class of which we have given a sample that the useful body of managing clerks is recruited; men against whose claim to the privileges of the Profession it is impossible to say more than that they have not had the money to pay for their articles. Why should this be sufficient to bar them, and keep them for ever without the pale of profit and honour? There are numbers of them without whose assistance their principals would be powerless to conduct their business—powerless from want of information. Nay, it is one of the frauds to which this unjust restriction gives rise—and oppression invariably produces fraud—that many managing clerks are in fact the principals of the businesses they conduct, and for which they borrow the sanction of a qualified name.

It is placing this question upon far too narrow ground to say that it is merely a difference between articled clerks and managing clerks, or between the latter and the body of attorneys, full fledged and fledgling. It is a case in which they have, as we believe, a common interest. But the interests of society, however this may be, are plainly concerned in the concession of free trade in law. A money

test of intellectual power and legal learning is not only, like the flute and the chair of philosophy, absurd—it is mischievous. It narrows the field of competition, and excludes from it those candidates from whom the highest qualifications might be expected—those who have had the ability and daring to fight their way against fortune, to force it in spite of difficulties which defy the multitude.—From the *Morning Advertiser*, 21st Jan.

### PROCEEDINGS BEFORE THE EQUITY JUDGES AT CHAMBERS.

SINCE our former notice of the regulations at the Chambers of the Equity Judges, some alterations have been made. The following applications are now to be made at the Judges' Chambers.

1. As to guardianship of infants (except the appointment of guardian *ad litem*).
2. As to maintenance or advancement of infants.
3. For the administration of estates under the Act of 15 & 16 Vict. c. 96.
4. For time to plead answer or demur.
5. For leave to amend bills or claims.
6. For enlarging publication or the time for closing evidence.
7. For the production of documents.
8. Relating to the conduct of suits or matters.
9. As to matters connected with the management of property.
10. For payment into court of purchasers' moneys under sales by order of the Court and investing same.
11. For stop orders where the assignor and assignee concur.

### CANDIDATES WHO PASSED THE EXAMINATION,

*Hilary Term, 1853.*

#### *Names of Candidates.*

#### *To whom Articled, Assigned, &c.*

Appleton, Henry . . . . .	John Page Sowerby
Aspinall, Clarke . . . . .	John Collinson; Richard Radcliffe
Ayre, Charles Edward . . . . .	William Ayre, jun.; William Sanger
Bell, John Leonard . . . . .	William David Bell
Bimson, John . . . . .	George Barker Carter
Breeze, Robert . . . . .	John Newbold; Edwin Wilkins Field
Broad, Joseph . . . . .	William Cooper
Bunting, John . . . . .	James Blythe Simpson; Richard Parsons
Clark, Frederick . . . . .	Edward Elsdale Clark
Durant, Benjamin Chandler, B.A. . . . .	Thomas Durant; Benjamin Chandler, jun.;
Edge, James Henry . . . . .	John Atkinson
Evans, Asa Johnes . . . . .	James Smith
Freeman, Charles Edwards . . . . .	Henry Abbot
Girdlestone, James . . . . .	John Harward
Groves, Thomas George . . . . .	James Leman
Hampson, Francis . . . . .	John Hampson
Hannay, William . . . . .	William Enfield
Hodgson, James Leyland . . . . .	Thomas Dodge; Alfred Lloyd Hardman
Kaye, George Edward . . . . .	Charles Kaye
Keays, Frederick . . . . .	Richard Fisher
Kough, Samuel Harley . . . . .	Thomas Harley Kough
Last, Frederick . . . . .	Augustus Charles Veley; Isaac Last; Henry Last
M'Clure, Edward Wade . . . . .	Edward Lewis; Andrew M'Clure; Joseph Remer
Marett, Edmund Rouse . . . . .	William Clarke
Markby, Henry . . . . .	Crabtree and Cross
Matthews, John Williams . . . . .	Alfred Rooker
Naters, Henry Trewhitt . . . . .	George Walton Wright; Frederick Turner
Neate, Albert . . . . .	John Neate
Nisbet, Henry Curtis . . . . .	Alfred Bell
Payne, John Brown . . . . .	Alexander Oliver
Plummer, William, jun. . . . .	Stephen Plummer
Pollock, Alfred Atkinson . . . . .	Philip Robert Alderson; Peter John Thomas
	Pearse; Peter John Thomas Pearse, jun.
Proud, John, jun. . . . .	Henry John Marshall
Ram, Stephen Adye . . . . .	James Inglis
Rhodes, Abraham . . . . .	Saffery William Johnson
Roberts, Samuel, M. A. . . . .	Richard Mason
Sanger, John Hill Melton . . . . .	Robert Wreford; John Nathaniel Wilson
Senior, Frederick Bernard . . . . .	William Chapman
Sheppard, Augustus Frederick . . . . .	William Parsons; Joseph King
Smith, Job Orton . . . . .	Philetus Richardson
Snowball, George . . . . .	George Walton Wright
Stiffe, Francis William Everitt . . . . .	Alfred Cox

**Names of Candidates.**

Thomas, Richard Aubrey . . . . .  
 Turner, George . . . . .  
 Walter, Charles . . . . .  
 Whitefield, John Charles . . . . .  
 Williams, Ebenezer Robins . . . . .  
 Winearis, William Good . . . . .  
 Wright, Egerton Leigh. . . . .

**To whom Articled, Assigned, &c.**

George Thomas, jun.  
 William Henry Turner  
 James Johnston; William Walter, sen.  
 William Gresham; William Bush Cooper; George  
 William Whitaker; William Bartholomew; Wil-  
 liam Bevan  
 Robert Gillam, sen.; Isaac Oliver Jones; Robert  
 Gillam, jun.  
 William Rackham  
 Richard Bloxam; Ralph Darlington; Thomas  
 Frederick Taylor

**PUBLIC EXAMINATION OF THE STUDENTS OF THE INNS OF COURT,**

*Held at Lincoln's Inn Hall, on the 22nd, 24th, and 25th days of January, 1853.*

The Council of Legal Education have awarded to—

William Whittaker Barry, Esq., Student of Lincoln's Inn—A studentship of fifty guineas per annum, to continue for a period of three years.

M. E. Grant Duff, Esq., Student of the Inner Temple—A certificate of honour, as having passed the second best examination.

Wm. O'Connor Morris, Esq., Student of Lincoln's Inn, and John Palmer, Esq., Student of the Inner Temple—Certificates that they have satisfactorily passed a public examination.

By order of the Council,

(Signed) **RICHARD BETHELL, Chairman.**

*Council Chamber, Lincoln's Inn,  
 January 29th, 1853.*

**RESULT OF THE HILARY TERM EXAMINATION OF ATTORNEYS.**

THE number of Candidates entitled to be examined in the last Term, was . . . . . 85

Of these 23 did not perfect their testimonials of service . . . . . 23

Leaving therefore to be examined only 62

One of these did not attend, and two withdrew during the examination 3

Ten were not passed . . . . . 10

— 13

The number entitled to be admitted on the Roll, therefore, was reduced to . . . . . 49

See the names at p. 278.

**COMMON LAW NOTICE.**

**DATE OF WRIT.**

It is recommended by the Judges that attorneys should in all cases insert at the commencement of the pleadings in the briefs the date of issuing the original writ of summons.

**SELECTIONS FROM CORRESPONDENCE.**

**SALES UNDER WRITS OF FI. FA.**

THE exactions of sheriff's officers are proverbial. Not content with the poundage allowed by Law, out of which the expenses of sale ought to be liquidated, they use every device to extort a larger sum. It is their practice to threaten to put up all the effects for sale *in one lot*, unless the demand is acceded to; and as such a course would be highly prejudicial to the plaintiff, he is obliged to submit to the imposition.

May I hope, therefore, that the Law Society will take the matter up, and endeavour to establish a rule to correct the evil. Whether it should be compulsory on the sheriff to offer the goods for sale in such lots as shall be approved by the plaintiff or his agent, may be worth consideration.

**A PRACTITIONER OF 50 YEARS.**

**ALTERING TRADESMEN'S BOOKS.**

It may be worth noticing, that by the Law of France it is a criminal offence for a tradesman to make, or suffer to be made, any alteration or erasure in his books with a knife. Whatever entry was originally made must remain visible. Might not some such regulation be useful here?  
 CIVIS.

**NOTES OF THE WEEK.**

**NEW MEMBER OF PARLIAMENT.**

**JOHN ALEXANDER, Esq.,** of Milford, in the county of Carlow, *for Carlow*, in the room of John Sadleir, Esq., who has accepted the office of one of the Lords Commissioners for executing the office of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland.

**APPOINTMENT OF REGISTRAR IN LUNACY.**

We are glad to announce that the Office of Secretary, now called *Registrar*, in Lunacy, which (with a recent brief exception), has always been filled by solicitors, has again been conferred on an eminent member of that branch of the Profession,—the present Lord Chancellor having re-appointed Mr. Charles N. Wilde.



## RECENT DECISIONS IN THE SUPERIOR COURTS AND SHORT NOTES OF CASES.

### Court of Appeal.

*Edlestone v. Collins.* Jan. 17, 18, 25, 1852.

**COPYHOLD PROPERTY. — FORECLOSURE. — SURRENDER OF MARRIED WOMAN TAKEN BY DEPUTY STEWARD, A MINOR.**

Held, on appeal from and confirming the decision of Vice-Chancellor Turner, that the surrender of a married woman of all her interest in certain copyhold property was valid, although taken before a deputy steward who was a minor,—and the usual decree was therefore made on a foreclosure bill filed by the assignee of a mortgage created by her husband on such property.

THIS was an appeal from the decision of Vice-Chancellor Turner (reported 44 L. O. 445). It appeared that in 1844, the defendant William Collins, and Mary Jane his wife, surrendered out of Court certain copyhold premises, which had descended to her in fee before her marriage, to secure a sum of 50*l.* advanced by Mr Adcock, of Cambridge, and that in December, 1846, a second surrender was made to secure a further advance of 100*l.*, whereby Mrs. Collins parted with her whole interest in the estate. This last surrender was taken before the deputy steward, who was a minor, and was contended to be void. Further advances had been made to Mr. Collins, and the whole charge, amounting to 600*l.*, was now vested in the plaintiff, as assignee of Mr. Adcock, and this bill was filed for a foreclosure. The Vice-Chancellor having decreed a foreclosure, this appeal was presented.

*Emsley and Smythe* for the plaintiffs; *Glassey and Beales* for the defendants, the appellants.

The Court said, that the office of a deputy steward was one which might be exercised by a minor, and the appeal would therefore be dismissed.

Jan. 26.—*In re Armstrong*—Habeas corpus refused.

— 27.—*In re Cumming*—Stand over.

— 27.—*In re Crosthwaite*—Arrangement as to hearing of motion to vary minutes.

— 27.—*In re Dover and Deal Railway Company, ex parte Mowatt and another*—Stand over.

— 28, 29.—*Derbshire v. Home and others*—Stand over.

— 29.—*In re Lord Huntingtower, ex parte Hume*—Appeal dismissed from Mr. Commissioner Fonblanque.

— 26, 27, 31.—*In re Tharp*—Cur. ad. vult.

— 31.—*In re Worcester Corn Exchange Company*—Part heard.

### Lords Justices.

Jan. 26.—*In re Manico, ex parte Manico*—On appeal from Mr. Commissioner Evans, protection to be granted at the end of six months.

Jan. 26.—*Ex parte Eckersley and others, in re Byron*—Cur. ad. vult.

— 27.—*In re Oxford and Worcester Extension Railway Company, ex parte Morrison*—On appeal from Master, claim allowed.

— 27.—*In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Woolmer and others*—Master's order discharged, costs to come out of the estate.

— 27.—*In re Worcester Corn Exchange Company*—Leave to set down appeal motion under Winding-up Act.

— 31.—*Peacock v. Stockford*—Appeal allowed from Vice-Chancellor Kindersley.

— 31, Feb. 1.—*Attorney-General v. Sheffield Gas Consumers' Company; Sheffield United Gaslight Company v. Same*—Cur. ad. vult.

### Master of the Rolls.

*Ex parte the Justices of Essex.* Jan. 28, 1853.

**MISTAKE IN ORDER OF EQUITY EXCHEQUER FOR PAYMENT OF MONEY.—CORRECTION OF.**

*The Registrar was directed to attend at the Record Office, Tower, for the purpose of altering an order made by the Equity Exchequer for the payment of certain costs, which was in favour of William F., whose right name was "James" William F.*

It appeared that an order had been made in the Equity Exchequer in 1829 for the payment of certain costs after taxation to Mr. William Freshfield, and that the cheques were accordingly drawn in that name by the Accountant-General, who refused to deliver them to Mr. James William Freshfield, the party intended.

Cotton, now applied for the alteration of the name in the order, which was deposited in the Tower.

The Master of the Rolls said, the alteration might be made under the direction of Mr. Davis, the registrar.

Jan. 27.—*Beale v. Symonds*—Exceptions to Master's report overruled without costs.

— 26, 28.—*Cockell v. Bacon*—Decree for redemption.

— 28.—*Swinburne v. Nelson*—Exceptions overruled to Master's report finding answer insufficient.

— 29.—*Congreve v. Palmer*—Judgment on construction of will.

— 29.—*In re Thornborough Trust*—Order for payment of fund out of Court on formal evidence that petitioner was sole next of kin.

— 31.—*Iveson v. Gassiot and others*—Order on motion for payment of money into Court.

— 31.—*Chichester v. Thistlethwaite*—Motion dismissed with costs to alter decree as passed.

— 31.—*In re Newcastle, Shields, and Sim-*

*derland Union Bank, ex parte Teather*—On order absolute to wind up company, reference to Chief Clerk instead of the Master.

Jan. 31.—*Birkenhead Dock Company v. Shrewsbury and Chester Railway Company*—Injunction continued.

— 31.—*Attorney-General v. Wyggeston Hospital*—Order discharged, substituting solicitor to charity in lieu of former solicitor, and declaration for the Master to be at liberty to appoint.

#### Vice-Chancellor Kindersley.

*Fowler v. Fowler.* Jan. 28, 1853.

MARRIED WOMAN.—PAYMENT OUT OF COURT OF MONEY.—CONSENT.

Held, that an order for the payment out of Court of a sum of 200*l.* to a married woman cannot be made without her appearance in Court for her consent to be taken.

THIS was a petition for payment out of Court of a sum of 200*l.* to the petitioner, a married woman, and to which she was entitled under a will.

*Pearson*, in support, submitted it was unnecessary to take her consent in Court.

The Vice-Chancellor said that 200*l.* was the sum fixed for a consent to be taken, and it could not be dispensed with in the present instance.

Jan. 27.—*Collett v. Newenham*—*Cur. ad. vult.*

— 29.—*Ex parte Lilanely Local Board of Health, in re South Wales Railway Company's Act*—Stand over for amendment of petition.

— 29, 31.—*Evans v. Sanders*—*Cur. ad. vult.*

#### Vice-Chancellor Stuart.

*Webster v. Webster.* Jan. 28, 1853.

HUSBAND AND WIFE.—SEPARATION DEED.—ANNUITY.—SUBSEQUENT RECONCILIATION.

Held, that a deed granting an annuity to be paid by a husband to his wife upon their separating, is avoided by their subsequent reconciliation and cohabitation.

But where after such reconciliation, the husband still continued to pay the annuity, the Court gave leave to the widow to amend her bill, by adding any additional facts whereby a fresh contract might be inferred.

UPON the separation of the plaintiff and her husband in December, 1844, a deed was executed, whereby he covenanted to allow her an annuity of 65*l.* during the term of her natural life, and the trustee covenanted in the usual form to indemnify him against her debts, and it was also provided that the husband should not visit the plaintiff without the trustee's consent. It appeared, however, that they had subsequently been reconciled and lived together until the husband's death in Jan. 1846, but the annuity was paid by the husband, and since his death by his personal representatives up to 1850. This bill was filed to recover the

arrears and the administration of the estate. The defendants pleaded, that the deed was avoided by the subsequent reconciliation.

*Malins and Macqueen*, for the defendants, cited *Westmeath v. Westmeath*, 1 Dow. & Cl. 519; *St. John v. St. John*, 11 Ves. 537; *Fletcher v. Fletcher*, 2 Cox, 99.

*Charles Hall* for the plaintiff.

The Vice-Chancellor said, the plea must be allowed, but that as the husband might by his subsequent conduct have created a new obligation as binding on him as if he had made a formal grant after the reconciliation, the plaintiff would be at liberty to amend by stating the circumstances of such conduct.

Jan. 26.—*King v. Savery and another*—Re-conveyance ordered.

— 27.—*Goodwin v. Fielding and another*—Stand over.

— 31.—*Heward v. Wheatley*—Petition refused with costs for reference back to the Master to review his report.

#### Vice-Chancellor Wood.

*Lakin v. Dashwood.* Jan. 19, 1853.

MARRIAGE SETTLEMENT.—FAILURE OF TRUSTS.—NEXT OF KIN.—TENANTS IN COMMON.

*A fund belonging to a lady was vested in trustees under a marriage settlement on certain trusts, and on failure thereof, in trust for the benefit of such person or persons as would have been entitled to the wife's personal estate in case she had died without having married and intestate: Held, that her two brothers, who were her next of kin, were entitled, upon the failure of the trusts, as tenants in common, and not as joint tenants.*

A SUM of 8,000*l.* was vested in trustees under the marriage settlement of Colonel Broadhead and Miss Susannah Ross, upon certain trusts therein mentioned, for the benefit of the husband and wife respectively, and in the event of there being no children, in trust for the benefit of such person or persons as would have been entitled to the clear surplus of the personal estate of Susannah Ross as her next of kin in case she had died without having been married or intestate. It appeared that she died without issue, leaving her two brothers, Sir Patrick Ross and Archibald Ross, her next of kin. A question now arose, whether they were entitled as tenants in common or as joint tenants.

*Bacon, Meesiter, C. Boscom, J. Bailly, Southgate, and Robinson* appeared for the several parties.

The Vice-Chancellor said, that they took as tenants in common.

*Webb v. Rowe.* Jan. 29, 1853.

CLAIM FOR REDEMPTION.—DEBT ON PROMISSORY NOTE FROM MORTGAGOR.—ADVANCES FOR RENEWAL OF LEASES.—ACCOUNT.

Upon a claim on behalf of the representatives of a mortgagor for the redemption of a mortgage, held that the mortgagee's personal representatives were entitled to have taken into account a sum due on a promissory note and also a sum paid for renewing the leases of the mortgaged property.

Nichols appeared in support of this claim on behalf of the personal representatives of the mortgagor, for the redemption of a mortgage of certain leasehold premises, which was executed in 1823, against the mortgagee's personal representatives. It appeared that a sum was due on a promissory note, dated in 1824, and also 142*l.* which had been paid to renew the leases of the mortgaged property.

Smale for the defendant.

The Vice-Chancellor made the order, with a declaration that the mortgagee was entitled to have those sums and the interest thereon taken into account.

Jan. 26.—*London and North Western Railway Company v. Shrewsbury and Birmingham Railway Company*—Stand over by consent.

— 26, 27.—*Burt v. Sturt*.—Bequest held void under the Thellusson Act for remoteness.

— 27, 28.—*Midland Railway Company v. Ambergate, Nottingham, and Boston, and East Junction Railway Company*—Injunction refused.

— 29.—*Carpenter v. Bliss*—Judgment in administration suit.

— 29, 31.—*Tibbitts v. Phillips*.—Decree for dissolution, account and sale, and for appointment of receiver.

— 29, 31.—*Wollaston v. Osborn*—Leave to plaintiff to examine parties and witnesses orally, or for claim of specific performance to be dismissed without costs.

### Court of Queen's Bench.

*In re Howard v. Brown.* Jan. 24, 1853.

INFRINGEMENT OF PATENT.—INJUNCTION AND ACCOUNT.—RULE FOR.—PRACTICE.

*The rule nisi for an injunction and an account upon the infringement of a patent under the 15 & 16 Vict. c. 83, s. 42, is a four-day rule, of which notice is to be given to the defendant.*

THIS was a motion for a rule nisi under the 15 & 16 Vict. c. 83, s. 42,<sup>1</sup> for an injunction to restrain the sale by the defendant of a patent spring infringing the plaintiff's patent and for an account. The plaintiff was assignee of the patent, which was for certain improvements in

springs for the support of heavy bodies and resisting the continued pressure of heavy bodies, and was used in railway buffers. It was described in the specification as consisting of a flat bar of steel formed into a spiral volute.

Sir F. Theigier in support, upon affidavits that the spring purchased of the defendant was substantially the same as the plaintiff's, and also of the novelty and utility of the plaintiff's patent.

The Court granted the rule, and directed it to be returnable in four days, notice thereof to be given to the defendant.

Jan. 26.—*Regina v. Newman*—Rule discharged for new trial.

— 27.—*Haylock v. Spark*—Rule discharged to set aside nonsuit.

— 27.—*Regina v. Ambergate Railway Company*—Judgment for defendants.

— 27.—*Regina v. Dimsdale*—Rule nisi for criminal information for libel.

— 27.—*In re Regina v. Wilson*—Rule absolute to rescind side-bar rule for taxation of costs of indictment.

— 27.—*Regina v. Mayor, &c., of York*—Rule discharged for mandamus.

— 27.—*In re Frere and another v. London and North Western Railway Company*.—Rule nisi for mandamus on defendants.

— 27.—*Regina v. Carr*—Rule absolute for quo warranto on town councillor of Oxford.

— 27.—*Miller v. Leather and another*—Rule absolute to set aside verdict for plaintiff.

— 28.—*Regina (ex parte Sir James Brooke), v. Eastern Archipelago Company*—Judgment for the Crown, on *sci. fa.* to repeal letters patent for incorporation of defendants.

— 28.—*Regina (ex parte Fisher) v. Great Western Railway Company*—Rule nisi to take return to mandamus off the file.

— 28.—*Regina v. Cokes*—Rule nisi for quo warranto on Mayor of Norwich.

— 28.—*Theobalds v. Cotterell*—Rule refused for new trial.

— 28.—*Regina v. Briggs*—Rule nisi for quo warranto on town councillor of Blackburn.

— 29.—*Regina v. Day*—Rule absolute for quo warranto on coroner of Hemel Hempstead.

— 29.—*Regina v. Earnshaw*—Rule absolute for quo warranto on town councillor of borough of Oldham.

— 29.—*Howard v. Hudson*—Rule nisi to enter verdict for plaintiff and for judgment *non obstante veredicto*.

— 29.—*In re Davey*—Rule discharged without costs to strike attorney off the Roll.

— 29.—*Regina v. Mayor, &c., of Newcastle-upon-Tyne*—Rule nisi for mandamus on defendant to permit acting of alderman.

<sup>1</sup> Which enacts, that "in any action in any of her Majesty's Superior Courts of Record at Westminster and in Dublin for the infringement of letters patent, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting, then for a Judge of such Court, on the application of the plaintiff or defendant re-

spectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such Court or Judge may seem fit."

Jan. 29.—*In re White*—Rule nisi for mandamus on Judge of York County Court to issue *habeas corpus* to bring up insolvent for re-hearing.

— 29.—*Regina v. Smith*—Rule absolute for *quo warranto* on town councillor of Leeds.

— 28, 31.—*Rawlinson v. Medwin*—Rule refused for prohibition.

— 31.—*Regina v. Newman*—Sentence herein.

— 31.—*Lumley v. Gye*—Leave to plead several matters.

### Queen's Bench Practice Court.

(Coram Mr. Justice Erle.)

*Regina v. Judge of Kent County Court at Margate.* Jan. 29, 1853.

COUNTY COURT.—NEW TRIAL.—RIGHT TO TRY BEFORE JURY, ALTHOUGH FIRST BEFORE JUDGE ONLY.

Held, *that the parties may on a second trial ordered in the County Court of a plaintiff, have it tried by a jury, although at the first trial there was no jury. A rule was therefore made absolute on the Judge for a mandamus to try the plaintiff before a jury.*

A RULE nisi had been granted for a mandamus on the Judge of the Kent County Court at Margate, to try a plaintiff of *Nutting v. Nutting* before a jury.

It appeared that the action had been tried by the Judge without a jury, and that a new trial had been ordered. A jury had been summoned to try the case without leave of the Judge, but the Judge held that the parties had no right to summon such jury, as no mention of such intention was made on the new trial being granted.

*Chambers* and *Simons* now showed cause against the rule, which was supported by *Lush*.

The Court said, that the parties had a right to have their case tried by a jury, and the rule was therefore made absolute.

(Coram Mr. Justice Crompton.)

*Alsett v. Marshall and another.* Jan. 31, 1853.

WITNESSES.—COSTS FOR MAINTENANCE DURING DETENTION IN THIS COUNTRY.

Held, *that the allowance of money for maintenance to a witness is not confined to the case of mariners. And a rule was made absolute for the review of the Master's taxation who had disallowed a sum of 30*l.* to an intended emigrant to Australia, where he had by the defendants' mistake been detained in England, and the action which he had thereupon brought had been compromised on payment of 40*l.* and the costs, —with a direction to the Master to inquire whether such detention was bond fide and reasonable.*

It appeared that the plaintiff, who was desirous of emigrating to Australia, had made arrangements with the defendants, shipbrokers,

to proceed in their vessel, the *Washington Irving*, as steerage passenger, but that in consequence of an omission of one of the defendants' clerks of the entry of the payment of his passage-money by the plaintiff, he had been turned out of the ship at Deal. On his arrival in London he brought this action against the defendants, but shortly before the trial it was compromised on the defendants' agreeing to pay 40*l.* and costs. The Master having on the taxation disallowed a sum of 30*l.* for the maintenance of the plaintiff as a witness for fourteen weeks, which was the period that had elapsed between the service of the writ and the time appointed for the trial, on the ground such allowance was only made in the case of mariners, this rule had been obtained to review his taxation.

*Premice* showed cause against the rule, which was supported by *Pulling*.

The Court said, the Master was wrong in limiting the allowance to mariners only, and referred it back to the Master to inquire whether the plaintiff had been bond fide detained as a witness, and whether it was reasonable, under the circumstances, for him to remain in this country.

Jan. 27.—*Regina v. Mulcaster*—Rule for *certiorari* to remove indictment into this Court.

— 31.—*Regina v. Justices of Middlesex*.—Rule nisi for mandamus on defendants to issue distress for poor-rates.

### Court of Common Pleas.

*Ex parte Hawke.* Jan. 31, 1853.

ARTICLED CLERK.—DISCHARGE FROM ARTICLES.—ABSENCE OF ATTORNEY.

*A rule was made absolute for the discharge of a clerk from his articles, where it was alleged that in consequence of the attorney's repeated absence from embarrassed circumstances, the clerk derived no benefit from his articles, and the Court directed the affidavits on both sides to be filed in order that on the clerk's applying for admission they might be investigated by the Law Society.*

THIS was a rule nisi on Mr. Ephraim Goatley, an attorney, to show cause why Mr. Hawke should not be at liberty to have his articles of clerkship with Mr. Goatley cancelled, and to enter into fresh articles with Mr. Julius Lawrence for the remainder of the term of five years, on the ground that Mr. Goatley's pecuniary embarrassments kept him away from his office for such lengthened periods that the business had materially diminished, and that he derived no benefit from his articles. It appeared from Mr. Goatley's statement that the applicant had introduced Mr. Lawrence in his absence nominally as a clerk, but in reality to deprive him of his business and the clients, and he opposed therefore the assignment to Mr. Lawrence.

*E. James and Hawkins* showed cause against the rule, which was supported by *Wordsworth*.

The Court, by consent of the parties, directed the indentures to be cancelled and discharged the rule,—the affidavits on both sides to be filed, so that when Mr. Hawke applied to be admitted an attorney, the Law Society might be able to judge of his fitness, and the affidavits were referred to the Master to report what amount in respect of them should be allowed for costs.

Jan. 26.—*Matthew v. Osborne*.—Rule absolute to enter a nonsuit.

— 26.—*Sherman v. Sanders*.—Rule discharged for new trial.

— 26.—*Fenn v. Forbes*.—Rule absolute to set aside award, on payment of moneys into Court.

— 27.—*Row v. Tipper*.—Rule discharged to enter verdict for plaintiff.

— 27.—*Mitchell and wife v. Cressweller*.—Rule discharged for new trial on the ground of misdirection.

— 31.—*Power v. Australian Navigation Company*.—Rule absolute for postponement of trial.

#### Court of Exchequer.

*Rosseter v. Cahmann and others*. Jan. 19, 1853.

WEIGHTS' AND MEASURES' ACT.—FOREIGN CONTRACT FOR SUPPLY OF OIL. — "OLD MEASURE."

Held, that the 5 & 6 W. 4, c. 63, s. 21, only applied to contracts to be executed in the United Kingdom, and that a plaintiff was therefore entitled to recover for a quantity of palm oil supplied to the defendants in Africa, although the contract specified it was to be a certain number of gallons "old measure," and not "imperial measure."

THIS was an action for goods sold and delivered, to recover for a quantity of palm oil supplied to the defendant on the coast of Africa, to which the defendant pleaded that the goods in question were delivered under a contract which was illegal under the 5 & 6 W. 4, c. 63, s. 21,<sup>1</sup> as made for the supply of a certain number of gallons of the oil, "old measure," instead of "imperial measure." To this plea the plaintiff put in a rejoinder to which the defendant demurred.

*M. Smith* for the plaintiff, on the ground the contract was to be executed abroad, although made at Liverpool.

*Field* for the defendants.

The Court said, that the statute only applied to contracts wholly arising within the United Kingdom, and did not extend to foreign transactions, and that the plaintiff was therefore entitled to judgment.

<sup>1</sup> Which enacts, that "any contract, bargain, or sale made by any such weights or measures shall be wholly null and void."

*Daniel v. Daniel*. Jan. 24, 1853.

COMMON LAW PROCEDURE ACT.—REVIVAL OF JUDGMENT MORE THAN 15 YEARS OLD.

*Rule nisi under the 15 & 16 Vict. c. 76, s. 134, to revive a judgment obtained in 1833 but not satisfied.*

THIS was a motion under the 15 & 16 Vict. c. 76, s. 134,<sup>1</sup> for a rule nisi to revive the judgment herein, which had been obtained in 1833, but had not been satisfied.

*R. A. Fisher* in support.

The Court granted the rule.

(Coram Mr. Baron Alderson.)

*Attorney-General v. Bullock*. Jan. 28, 1853.

POSTPONEMENT OF TRIAL.—ABSENCE OF MATERIAL WITNESS.—COMMISSION.

*A trial was postponed in consequence of the absence of a material witness in America, and a commission was directed to issue for his examination.*

THIS was an application for the postponement of this trial in consequence of the absence in America of a material witness.

*Lush* in support.

The Court said, the trial might be postponed until the sittings after Easter Term, and directed a commission to issue to take the examination of the witness.

Jan. 26.—*Anderson v. Thompson*.—Rule refused for new trial.

— 26.—*Mayne v. Wyld*.—Rule refused for new trial.

— 26.—*Hubbersty v. Ward*.—Rule discharged for new trial.

— 26.—*Attorney-General v. London and South-Western Railway Company*.—Stand over for amendment of special case.

— 27.—*Simmons v. Lillystone*.—Cur. ad. vult.

— 27.—*Wagh v. Middleton*.—Judgment for the plaintiff.

— 29.—*Bevington v. Griffith*.—Rule nisi for discharge of plaintiff out of custody.

— 29.—*Hobson v. Neale*.—Judgment on case from Court of Chancery.

— 26, 31.—*Woodhouse v. Craig*.—Rule discharged to enter verdict for defendant, on reference by consent.

— 31.—*Nash v. Hedger*.—Rule refused for new trial.

— 31.—*Levy v. Cotterell*.—Rule absolute for *stet processus* on payment of costs within a fortnight, otherwise verdict for defendant to stand.

<sup>1</sup> Which enacts, that "a writ of revivor to revive a judgment less than 10 years old shall be allowed without any rule or order; if more than 10 years old, not without a rule of Court or a Judge's order; nor, if more than 15, without a rule to show cause."

**Court of Essex Chamber.**

*Regina v. Dale.* Nov. 13, 1852; Jan. 22, 1853.

**ALHOUSE ACT. — PENALTY, HOW APPROPRIATED.—INDICTMENT AGAINST CLERK TO BOROUGH MAGISTRATES.**

Held, that the penalty inflicted on a publican for keeping his house open after 12 o'clock is to be paid to the treasurer of the county under the 9 Geo. 4, c. 61, s. 26, and not to the borough treasurer. A conviction was therefore confirmed against the clerk to borough magistrates for having paid one-half of such penalty to the borough treasurer and the other to the prosecutor.

UPON a conviction of a publican named Gibbon for having kept his house open after 12 o'clock, the fine of 2*l.* 10*s.* had been paid to the defendant, the clerk to the borough magistrates of Tynemouth, who paid one moiety thereof over to the borough treasurer and the other to the prosecutor, and he was thereupon indicted and found guilty for not having paid the same to the county treasurer under the 9 Geo. 4, c. 61, s. 26, which enacts, that "it shall be lawful for any justice, before whom

any penalty shall be recovered under the provisions of this Act, to award, if he shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor, and the remainder to the treasurer of the county or place for which such justice shall then act; and the said treasurer shall place the same to the credit of such county or place, and shall duly account for the same."

And by s. 126 of the 5 & 6 Wm. 4, c. 76, as to the application of penalties, it is provided, that "nothing herein contained shall extend to any penalties or forfeitures recovered under any Act relating to the Customs, Excise, and Post Office, or to trade or navigation, or any branch of his Majesty's revenue."

*Pashley* for the defendant; *Otter* in support of the conviction.

*Cur. ad. vult.*

The Court held, that the penalty should have been paid to the county treasurer, and confirmed the conviction accordingly.

Jan. 28.—*Stevenson v. Newenham—Venire de novo.*

— 28, 29.—*York and North Midland Railway Company v. Regiam—Cur. ad. vult.*

**ANALYTICAL DIGEST OF CASES,**

REPORTED IN ALL THE COURTS.

**LAW OF WILLS.**

**DEVISE.**

1. *Estate of inheritance or by purchase.—Coalescence of life estate with estate in remainder.—General and particular intent.*—*H.*, seized of lands in fee, devised them to trustees and their heirs, to the use of the heirs male of *E.*, his sister (which *E.* died without leaving issue male), who should live to attain the age of 21, and to his heirs and assigns for ever. And, for want of such heirs male, or, there being such, he or they should die before severally attaining the age of 21, then to the use of *C.* (a niece), for the term of her natural life, for her separate use, independent of any husband; her receipt for the rents to be sufficient discharges, notwithstanding her coverture. And, after the determination of that estate by forfeiture or otherwise, to the use of the same trustees and their heirs, during *C.*'s life, in trust to preserve contingent uses and estates after limited, but to permit *C.* to receive the rents during her life. And, after *C.*'s decease, "to the use of the heirs male of the body of *C.*, lawfully to be begotten, who shall live to attain the age of 21 years, and to his heirs and assigns for ever. But, in default of such heirs male, or, there being such, he or they shall die before he or either of them shall attain the age of 21 years without lawful issue, then to the use" of *M.* (another niece), with the like limitations as in the case of *C.*, to *M.* and her heirs male. But, in default of such heirs male, &c., or, &c. (as before), then to the use of

all and every the daughters, if more than one, of *C.*, their heirs and assigns for ever, to hold as tenants in common, and not as joint tenants; and, if but one daughter, then to the use of such only daughter, her heirs and assigns for ever. And, in default of such daughter or daughters, or, there being such, all of them should die before attaining 21, without lawful issue, then to the use of *M.*'s daughters, with similar limitations. And, in default, &c. (interests given to other parties). Direction, that the trustees should receive the rents until the persons should be entitled to and come into possession under the said limitations; such rents to form part of the personal estate. Power to the trustees to lease for a term not exceeding the period at which *C.* and *M.* respectively would attain 21, reserving the rent to the trustees or the persons who should become entitled. Power to appoint new trustees, and devise to them jointly with the survivors of the original trustees; such survivors to transfer, so that the legal estate should vest in the new trustees. By a codicil, power was given to the trustees to employ a person named as receiver of the rents.

Held, that *C.* took an estate in tail male, either legal or equitable. For that—

1st. If the trustees took the legal estate during *C.*'s life, they took also the legal estate as to all the limitations down to and including the estate of *M.*; and therefore the estates limited after *C.*'s life would, if taking effect as by inheritance and not as by purchase, coalesce

with the life estate into an estate in tail male. And that

2nd. The said estates took effect by way of inheritance, it appearing that the deviser did not intend that the estate should go over so long as there was issue male of C., and therefore the words "heirs male of the body" must have their technical effect as words of inheritance (not of description); and the words "who shall live to attain the age of 21 years, and to his heirs and assigns for ever," were to be rejected, the particular intent thereby expressed being inconsistent with the general intent. *Toller v. Atwood*, 15 Q. B. 929.

Cases cited in the judgment: *Shelley's case*, 1 Rep. 184, s.; *Harton v. Harton*, 7 T. R. 652; *Hawkins v. Luscombe*, 2 Swanst. 391; *Festing v. Alten*, 12 M. & W. 279; *Bull v. Pritchard*, 5 Hare, 567; *Jesson v. Doe dem. Wright*, 2 Bligh. 1, 57; *Jack v. Fetherston*, 9 Bligh. N.S. 257; 3 Cl. & F. 67; *Poole v. Poole*, 3 B. & P. 627; *Doe nem. Tremewen v. Permeuven*, 11 A. & E. 431; *Dunk v. Fenner*, 2 Russ. & M. 557; *Montgomery v. Montgomery*, 3 J. & Lat. 47.

2. *Falsa demonstratio*.—Tenant in fee of four messuages at L. H., in the parish of F., having no other land, devised to J. in fee "all those my three messuages or tenements, with the gardens, close of land, and all other my real estate whatsoever, situate and being at L. H., in the parish of F. as aforesaid, now in the occupation of myself," C., W., N., and H. Three of the messuages were in the occupation of the deviser, C., W., N., and H.; the fourth messuage was not in the occupation of the deviser or of C., W., N., or H.

*Held*, that the fourth messuage passed by the general words. *Doe dem. Campton v. Carpenter*, 16 Q. B. 181.

Cases cited in the judgment: *Doe dem. Hubbard*, v. Hubbard, 15 Q. B. 227; *Wilson v. Mount*, 3 Ves. 191.

3. *To son for natural life and to issue of body*.—*Estate tail*.—Testator devised as follows:—"I give and devise to my son Stephen, a small field at, &c., to hold to my said son Stephen for and during the term of his natural life: and from and after his death, then I give and devise the same to the issue of his body lawfully begotten, if more than one, equally amongst them; and, in case he shall not have any issue of his body, lawfully begotten, at the time of his death, then I give and devise the same to my heir or heirs-at-law." *Held*, that Stephen, the son, took an estate tail. *Doe d. Cannon v. Rucastle*, 8 C. B. 876.

Case cited in the judgment: *Shelley's case*, 1 Co. Rep. 93, b.

4. *Construction of*.—A testator devised as follows:—"I give to my granddaughter S., her heirs, executors, and administrators for ever, that dwelling-house in Tavistock Street, No. 3, in the borough of Plymouth. I also give to S. that dwelling-house and garden situate behind the abovenamed dwelling-house,

and in the occupation of C. I also give to S. that other dwelling-house and garden situate in York Street, No. 30, the whole of which premises are in the borough of Plymouth, during her natural life; but should S. marry and have children, then, after her decease, the before-mentioned houses to descend to her children; but should S. die without issue, then the said premises to become the joint property of the children of B. I also give, provided S. dies without issue, the sum of 100*l.* to J., to be paid to him out of the before-mentioned premises." *Held*, that S. took an estate in fee simple in the first-mentioned house; and therefore, upon her death without issue, the children of B. were entitled only to the two other houses. *Doe dem. Bailey v. Sloggett*, 5 Exch. R. 107.

#### DUPLICATE WILLS.

*Executed at different times and places*.—*Direction to the jury*.—The testator executed a will in Yorkshire, in 1776, he then having four sons. A fifth son being born in 1777, the testator, in 1778, executed in London, what was apparently intended to be a copy of, and was dated on the same day as, the Yorkshire will, and at the same time made a codicil in duplicate,—the ostensible object of the codicil being to make provision for the newly born son. The testator's third son died in 1795. The testator died in 1808, leaving the other four sons him surviving. After his death, the Yorkshire will, with one copy of the codicil, were found in an open portfolio upon his library table, with erasures in both, the effect of which would be, in a certain event, to give to the eldest son certain estates which otherwise would have gone to the younger sons in succession. The London will, with the other copy of the codicil, were found, without alteration, locked up in a drawer in the same table. In the portfolio was also found an undated and unfinished sketch of a will. The Yorkshire will, and the codicil found with it, were proved by the testator's widow and executrix. After the death of all his brothers, the testator's fifth son brought an ejectment against the heir of his eldest brother, claiming under the limitations in the unaltered (or London) will and codicil.

At the trial, the Judge, left it to the jury to say,—1st, whether the London will was executed by the testator as a separate and independent will, or whether the Yorkshire will and the London will, with the duplicate codicil annexed to each, formed one will, the last will of the testator; telling them, that if they were satisfied that all the documents together formed one will in two parts, an alteration or obliteration in one part, was, in point of law, an alteration or cancellation of the corresponding portion of the other part, and that the will, so altered, became the last will of the testator; 2ndly, whether the alterations, when they were made by the testator, were intended by him to be final, and to stand as his last will, or were merely deliberative, and intended to exist only until he made a future will. The jury found

that the two wills and the codicil were intended to form one will, and that the alterations in the Yorkshire will, and in the codicil found with it, were intended to be final.

*Held*, that these two questions were properly submitted to the jury, and that the direction of the Judge was correct in point of law.

*Held*, also, that it was no ground for a new trial, that the Judge left to the jury as a question of fact, that which he should himself have decided as a matter of law,—unless the objection was presented to the notice of the Judge at the trial. *Doe dem. Strickland v. Strickland*, 8 C. B. 724.

Case cited in the judgment: *Killican v. Lord Parker*, 1 Lee's Eccl. Cas. 662.

#### ESTATE TAIL.

*J. D.*, at the time of making her will, was entitled to two freehold estates, one in the county of Westmoreland, and the other in the county of Berks, and also two copyhold estates, one called Hempstead, and the other Cock Corns. In 1778, *J. D.* made her will, and devised her freehold estate, in the county of Westmoreland, after certain life estates, to her great nephew, *T. B.*, for life, then to his issue for their respective lives, remainder to his brother, *H. D. B.*, for life, then to his issue for their respective lives, and then to *S. E.* for life, and her issue, remainder to the right heirs of the testatrix. She devised the copyhold estate of Hempstead, after certain life estates, to *H. D. B.*, for life, remainder to his issue, remainder, to *T. D.*, and the copyhold estate of Cock Corns, after the same life estate, to *H. D. B.*, for life, remainder to his issue, remainder to *R. D.* The freehold estate in the county of Berks, the testatrix devised, after certain life estates, to *T. B.*, remainder to his issue for their respective lives, remainder to his brother, *H. D. B.*, and his issue in like manner, remainder to *S. E.* for life, and her issue, and then, with limitations over in strict settlement, to certain collateral relations of the testatrix. In 1784, the testatrix made the following codicil:—"And whereas I have in and by my said will, in the disposition I have therein made of my share of the real estates in the counties of Westmoreland, after the several limitations in favour of my great nephew, *T. B.*, shall be spent, limited the same precisely in the same manner to his brother *H. D. B.*, I do hereby confirm the same, and further declare my mind and will to be, that, in the next disposition made in my said will, and of and to my share of the several copyhold estates of Cock Corns, &c., the said *T. B.* shall, after the limitations in favour of his brother, *H. D. B.*, shall be spent, have precisely the same estate and interest therein before the subsequent limitations to *T. D.* and *R. D.*, shall respectively take place as the said *H. D. B.* hath, in and by my said will in the estates in the said county of Westmoreland; and I do hereby give and devise the copyhold estate which I lately purchased of the widow *K.*, and which, after my admittance to the same, I surrender to the use

of my will, to the said *H. D. B.*, with the like limitations over as are contained in my said will and this codicil, concerning my other copyhold estates in the said county of Hertford or otherwise." *Held*, that, according to the true construction of this codicil and will, the copyhold estate of Cock Corns was devised to *T. B.* and his issue for life. *Grover v. Burningham*, 5 Exch. R. 184.

#### LEASING POWER.

*Accustomed rents. — Latest lease. — Will, when to be read as bearing date of codicil.*—By will of 1761, power was given to tenants for life to lease for lives, so that there were reserved in every such lease the ancient and accustomed rents and heriots for the premises, or more. By codicil of 1763, reciting that another child was born to the testator since the making of his will, that his former children were provided for, and that he wished to provide for his last born child, provision was made accordingly; and the will was thereby also ratified.

In a lease of 1724, the rent was 1*l.*, and a heriot, or 3*l.* in lieu of it, was reserved, and the lease was granted on payment of a fine. By another lease, granted in 1762, between the times of making the will and the codicil, the rent was 15*l.*, and there was no heriot or fine. A tenant for life, in execution of the leasing power, granted a lease according to the lease of 1724: *Held*,

That, although the latest lease preceding the creation of the power was entitled to greater weight than any single earlier lease, and ought to govern the decision where there was a balance of evidence, yet, where the ancient custom appeared to have been uniform, and a single lease varying therefrom was granted just before the creation of the power, the exceptional lease ought not then to govern merely because it was the latest.

That whether the lease of 1724 or that of 1762 contained the ancient and accustomed rent and heriot was a question for the jury.

That the will, creating the power, was not to be read as of the date of the codicil confirming the will; because the codicil was made for one specific purpose wholly unconnected with the power in question; and the rule, that a codicil confirming a will makes the will for many purposes to bear the date of the codicil, is subject to the limitation that the testator's intention be not defeated thereby. *Doe dem. Biddulph v. Hole*, 15 Q. B. 848.

#### PAROL EVIDENCE.

*To explain devise. — Description of premises. — Falsa demonstratio.*—Testator, after bequeathing money and chattels to his wife, devised as follows:—"And, as to all the residue of my estates whatsoever, not hereinbefore given and disposed of, I will and desire that all that piece of land, known, &c., be divided into five equal parts; one part to be given, &c.: he then devised one-fifth part to his eldest son, William, two-fifth parts to his sons Thomas and John



respectively, and the remaining two to persons named Parkinson and Weston; all in fee. He then proceeded:—I do hereby give to my son David H. all these two cottages or tenements, the one occupied by my son John H., the other occupied by my granddaughter, together with all the appurtenances thereto belonging: devising also to David other lands, and the testator's horses, implements of husbandry, &c., and debts, and appointing him sole executor.

In an ejectment brought by William, as heir-at-law, against David, it appeared that the testator, several years before executing his will, was admitted to copyhold premises, described on the Court-rolls as "two customary or copyhold messuages, cottages or tenements adjoining or near to each other, with the yards, gardens, and homestead to the same belonging, containing 2a. 24p., situate," &c.; now or late in the occupation of, &c. (three persons named). The testator at first occupied all the premises; but he afterwards, and before the date of his will, divided one of the cottages into two dwellings by a partition on the ground floor, leaving no interior communication, but making a new outer door. One of these dwellings was occupied by the granddaughter above-mentioned, the other by Wm. H., the eldest son. He had also, before making the will, divided the second cottage in like manner; and one part of this was occupied by the son John H., named in the will, and the other by David, the above-mentioned defendant, also therein named. There were no appurtenances to the tenements so newly formed, except a hovel apart from, but used with, the dwelling occupied by John, and a pantry adjoining that occupied by Elizabeth. Another part of the buildings had been formed into a cottage, and occupied by a person named Weston, before the making of the will.

*Held*, by Lord Campbell, C. J., *Patteson*, and *Wightman*, JJ., *Erie*, J., dissentiente, that by the devise of the two cottages as described in the will, nothing passed but the tenements actually occupied by John H. and the granddaughter; and that the deviser remained intestate as to the residue, which therefore passed to the heir-at-law.

The person who prepared the will being called as a witness, counsel proposed to ask him "what the testator said about the two cottages" on that occasion.

*Held* by Lord Campbell, C. J., *Patteson*, and *Wightman*, JJ., that the question, in that general form, could not be put. *Doe dem. Hubbard v. Hubbard*, 15 Q. B. 227.

Cases cited in the judgment: *Doe dem. Templeman v. Martin*, 4 B. & Ad. 771, 785; *Thomas v. Thomas*, 6 T. R. 671, 676; *Roe dem. Ryall v. Bell*, 8 T. R. 579; *Doe dem. Humphreys v. Roberts*, 5 B. & Ald. 407; *Newton v. Lucas*, 6 Sim. 54.

#### "POSTHUMOUS CHILD."

Testator, in contemplation that his death was approaching, devised lands to his wife for life, with remainder in fee to his nephew,—

with a condition, that if his wife should give birth to a posthumous child, such child should take, to the exclusion of the nephew. A child being afterwards born in the testator's lifetime, *Held*, that such child did not take by implication under the will. *Doe dem. Blackston v. Haslewood*, 10 C. B. 544.

#### REMAINDER AFTER TENANT IN COMMON.

*Devisee for life*.—Devise to trustees "to the use and behoof of my son and daughter and their respective assigns, for and during the term of their respective natural lives, equally to be divided between them, share and share alike: remainder to the trustees to preserve contingent remainders;" but, nevertheless, to permit and suffer my said son and daughter respectively, and their respective assigns, to receive and take the said rents," &c., "to their use during their natural lives; and, from and after the decease of my said son and daughter, or either of them, to the use and behoof of all and every the children of my said son and daughter respectively, both male and female, and their several and respective heirs and assigns, to be equally divided among them, share and share alike, as tenants in common, and not as joint tenants; and, if there shall be only one such child of my said son and daughter, to the use and behoof of such child, his or her heirs and assigns for ever; and, for default of such issue of my said son and daughter, then I give and devise the said premises" to the use of T. P. in fee.

The son and daughter, who had each several children, survived the testator.

*Held*, that, on the death of the son, his moiety did not pass to his sister, who survived him, for her life, with a view to a deferred distribution, after her death, among the children of the two families *per capita*, but that his moiety passed at once to his children. *Doe dem. Patrick v. Royle*, 13 Q. B. 100.

Cases cited in the judgment: *Pery v. White*, 3 Cowp. 777; *Doe dem. Comberbach v. Parrya*, 3 T. R. 484; *Right dem. Shortridge v. Creber*, 5 B. & C. 866.

#### RESIDUARY CLAUSE.

"*Testamentary estate*."—P., seised in fee, by will dated 1821, devised land to W., without words implying inheritance, "but not to be sold or mortgaged;" and then he devised lands to E. S.; and added, "also, I give, devise, and bequeath unto the said E. S. part of my household goods and chattels, and testamentary estate and effects, whatsoever name and denomination, except my clock," &c. (other personal chattels named), "which I give and bequeath unto M. H.; and the remainder of my household goods, chattels, and testamentary estate and effects, I give, devise, and bequeath unto the said M. H. and E. S., share and share alike:" *Held*, that the residuary clause passed the remainder expectant upon W.'s life estate. *Doe dem. Evans v. Walker*, 15 Q. B. 28.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 12, 1853.

## LAW BILLS BEFORE PARLIAMENT.

### EXTENSION OF COUNTY COURT JURISDICTION.

THE regular Parliamentary Session having commenced, attention is naturally directed to the progress and prospects of the various measures, connected with the administration of justice, introduced in the short preliminary Session which preceded the Christmas Recess, as well as those now announced for the first time.

The indefatigable persons who, no doubt, disinterestedly, devote their energies to the aggrandisement of the County Courts, and whose vocation it is incessantly to proclaim the superlative merits of those tribunals, have, it seems, succeeded in persuading Lord Brougham to press forward the Bills already submitted to the House of Lords, "for further extending the jurisdiction of the County Courts and facilitating proceedings in the High Court of Chancery;" and "for giving to the Judges of the County Courts jurisdiction in matters of arrangement and of Bankruptcy."

It was clearly to be inferred from what fell from Lord St. Leonards in the statement made by him in the House of Lords on the 16th November last, that he did not concur in the proposal further to extend the jurisdiction of the County Courts, and we shall be somewhat surprised if the proposition is received with greater favour by Lord Cranworth, who must be considered upon such matters to represent the government. Still, we have no doubt, it has been earnestly impressed upon Lord Brougham that the public are anxiously desiring an increase of the County Court jurisdiction, and that its only adversaries are the country attorneys, and, under this conviction, it is probable that the sense of Parliament will

be taken upon the question, and the whole subject fully discussed. To enable our readers to form their own opinions upon the merits of the Bills already in print, and to keep what in nautical phrase is termed "a clear deck," we subjoin an epitome of both the Bills laid before the House of Lords for extending the County Court jurisdiction.

The Bill, the preamble of which states that "it is expedient further to extend the jurisdiction of the Judges of the County Courts, and thereby and otherwise to facilitate proceedings in the Court of Chancery," empowers the Lord Chancellor to appoint such Judges of the County Courts as he shall think fit to be officers of the Court of Chancery, in such matters, for such purposes, and under such regulations, as the Chancellor, with the advice and consent of the Lords Justices, Master of the Rolls, and Vice-Chancellors, or any two of them, shall by General Orders direct. The subject-matter of the General Orders and Regulations to be made by the Chancellor, with such advice and consent, is thus specified:—

1st. For enabling the Court of Chancery to send accounts and inquiries to Judges of the County Courts, and to Masters Extraordinary in Ireland of the English Court of Chancery.

2nd. For taking down evidence, and for providing for the preservation of examinations, &c.

3rd. For authorising Judges of the County Courts and Masters Extraordinary in Ireland, to administer oaths, and take pleas, answers, examinations, and disclaimers in causes in Chancery, and also the examination of married women with reference to the disposal of funds subject to the order of the Court.

4th. For enabling the said Judges and Masters to examine witnesses, and regulating the mode of such examination.

5th. For transmission of proceedings by post, or otherwise.

In orders of reference, under this Act, to a Judge of the County Court or Master Extraordinary, accounts are to be taken and reports and inquiries thereon made as in Equity. The Lord Chancellor is empowered to make orders enabling witnesses to be examined *vivâ voce*, witnesses to be bound to answer as if examined on interrogatories, and persons subpœnaed bound to attend, and subject to penalties for perjury upon false swearing.

In addition to the specific power already referred to, the Lord Chancellor has also a *general* power, "with such advice and consent as aforesaid," to make such other Rules and Regulations as he may think fit for carrying this Act into execution, and in respect of costs and fees to be paid in respect of proceedings under this Act, and all orders made under this Act are to take effect as General Orders of the Court of Chancery. It is also proposed to enact, that pleas, answers, affidavits, &c., may be sworn in Scotland, Ireland, the Channel Islands, or the Colonies, before any Court or person authorised to administer oaths.

Assuming the County Court Judges to be competent to perform the duties which this Bill seeks to impose upon them, and to have ample leisure and opportunities, the Bill is objectionable in principle, inasmuch as its operation is made to depend altogether upon the will of the person to whom the custody of the Great Seal is intrusted. Surely this transfer of its functions by the Legislature is not consistent with constitutional principles, and could only be justifiable in a case of established necessity?

The Bill "to limit the jurisdiction of the Court of Bankruptcy, to abolish the Courts of Bankruptcy for the country districts, and to give the Judges of the County Courts jurisdiction in matters of arrangement and Bankruptcy," is of a more complicated and pretending character than that above described. It proposes, in the first place, to restrict the jurisdiction of the London Court of Bankruptcy to cases in which the trader has resided or carried on business for six months preceding the bankruptcy within 20 miles from the General Post-office; to abolish the Birmingham, Bristol, Exeter, Leeds, Liverpool, Manchester, and Newcastle Courts of Bankruptcy, and to give the same authority to the County Court Judges that is now vested in the Commissioners of the Court of Bankruptcy.

If the trader, or petitioner in matters of arrangement, has not resided or carried on business for six months within the district of any County Court, the petition is to be filed in the Court of Bankruptcy in London; country Commissioners and Registrars of the Court of Bankruptcy are to continue to act in pending proceedings until these be transferred to the Court of Bankruptcy or County Courts; records and proceedings are to be transferred to the Clerks of the County Courts, and the Accountant in Bankruptcy is to dispose of the buildings now used as district Courts of Bankruptcy.

It is further proposed, that the Commissioners of the Court of Bankruptcy *will*ing to become County Court Judges, and Registrars with the requisite qualification, may be appointed additional County Court Judges, with the same amount of salary and retiring annuity they are now entitled to, whilst the Commissioners and Registrars *desirous of retiring*<sup>1</sup> are to be permitted so to do, and paid two-thirds of the amount of salary now receivable. The Court in London is to be reduced to a Chief and two other Commissioners with a proportionable reduction in the number of subordinate officers.

To carry out the principle of the Bill, it is provided, that all County Court Judges shall, *ex officio*, be Commissioners of Bankruptcy, that declarations of insolvency shall be filed in the district in which the trader shall reside or carry on business, and that the Clerks of the County Courts are to have the same power as the Registrars of the Court of Bankruptcy under "the Bankrupt Law Consolidation Act, 1849."

Compensation is of course provided for officers of the Court of Bankruptcy whose offices are abolished, such annuities and compensations to be payable out of the Chief Registrar's account, and to be purchaseable from the persons entitled thereto, by the Accountant in Bankruptcy under

<sup>1</sup> As we read the Bill, it makes no provision for the Commissioners who may not be willing to accept the office of County Court Judges, and are not desirous of retiring upon two-thirds of their present salaries. These gentlemen, therefore, would continue to receive their full salaries for life without performing any public duty in return, and their names in future years would swell the long list of those who receive compensation from the now inadequate funds of the Court of Bankruptcy. See the return of receipts and disbursements for 1852, *ante*, page 107.

the direction of the Lord Chancellor, and if the stock, funds, and cash, standing in the name of the Accountant, are insufficient to meet just demands, the sum taken for the purposes of the Act to be deemed a debt due from the public, and made good by Parliament.

The usual power is given to the Commissioners of the Court of Bankruptcy and any three of the County Court Judges, to make rules and orders, with the approval of the Lord Chancellor, for carrying the Act into effect; and some miscellaneous provisions are introduced, as to the records of petitions presented by insolvent debtors to the County Courts, and the stamp duty payable upon petitions for arrangements by non-traders, under the Act 7 & 8 Vict. c. 70.

We have already endeavoured to show how objectionable and injurious it would be to the commercial community to hand over the administration of bankrupts' estates, and the peculiar and complicated questions of law, arising thereupon, to tribunals created for the purpose of facilitating the recovery of small debts. The machinery of the County Courts, the local arrangements and divisions connected with them, and the duties and qualifications of the Judges, render it impossible that the Bankrupt Laws could be administered to the satisfaction of the public by these tribunals as at present constituted.

Lord Truro, when Lord Chancellor, gave great offence by stating in the House of Lords with characteristic manliness and candour, that the gentlemen who had accepted office as County Court Judges, were not in general fitted for the exercise of the higher class of judicial functions. This truth has long been apparent to the Legal Profession, and it is generally felt that although the recent appointments to County Court Judgeships have been in most instances unexceptionable, many of the earlier appointments must have been made without a very careful scrutiny of the judicial qualifications of the persons appointed. The truth should be told, that if a higher and more important jurisdiction is to be conferred upon the County Courts, some of the present race of Judges should be induced to retire, and their places supplied by men of greater practical experience and higher professional reputation; but for the jurisdiction to which the Courts ought to be restricted, the present Judges are fully competent.

## THE REPEAL OF THE ANNUAL CERTIFICATE DUTY ON ATTORNEYS.

We understand that the Chancellor of the Exchequer, to whom a memorial was presented by the Council of the Incorporated Law Society, has intimated his intention to appoint a time for receiving a Deputation on the proposed repeal of the Certificate Duty. Lord Robert Grosvenor has again agreed to head the deputation, with other members of Parliament, and we shall soon know whether the Government will include the repeal of the tax in their financial plan. It may, at all events, be expected that if the sense of the new Parliament must be taken on the subject, there will be only one division,—after which no further opposition will be offered.

The Solicitors in the country will, no doubt, exert their just influence with their Representatives in Parliament, and ensure their attendance when the motion comes on.

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION AFTER PAYMENT UNDER PROTEST.—PRESSURE.

In a case recently reported, it was held that a protest upon payment of a bill of costs has no effect, and that the cases of taxation after payment will not be extended. The facts were briefly as follows:—

A solicitor's bill was delivered and disputed, but paid under protest, in order to release a fund and satisfy a creditor who threatened execution. Nearly 12 months after payment, a petition was presented for taxation, but alleging no specific items of overcharge.

The *Master of the Rolls* said, "These cases are always very painful; and I agree with Lord Langdale that they are productive of considerable evil, not only from the length of time they occupy in discussion, but from the disputes and ill feeling they engender. In cases of taxation after payment, on the ground of pressure or overcharge, I shall not carry the authorities to the least extent further than I find them. I think that the hardship on solicitors is already sufficient, and I shall not increase it.

"The case is this:—A bill is delivered on the 28th of June, 1850, and it is paid under protest on the 14th of August, or about seven weeks afterwards. There are various

authorities which decide, that protesting upon payment of a bill amounts to nothing; it is merely saying, 'I reserve to myself every right I may have to get the bill taxed.' Lord Langdale, who was disposed to construe the Act with some stringency against solicitors, considered that payment under protest amounted to nothing.<sup>1</sup> Assuming, therefore, that this bill was paid under protest, I am of opinion that I must look at it in the same light as if there had been no protest at all. The case comes to this: that *Johnson*, a creditor of the petitioner, was about to issue execution against her for a debt, whereupon she paid the solicitor's bill of costs, in order to get rid of the lien on the fund, and to make it available for the payment of this debt. I put the question to the counsel for the petitioner: 'Is there any case in which the pressure of third persons has been considered pressure on the part of the solicitor?' He informed me that he was not aware of any such case. How could the taking in execution by a stranger be considered as pressure on the part of the solicitor?—in the case of *In re Tryon*,<sup>2</sup> and in *Ex parte Wilkinson*,<sup>3</sup> there was pressure and other circumstances combined which opened the settlement of the bill of costs.

"I have this additional fact in this case, that the only overcharge I can find, which is not denied, is for the three notices charged for, which are about three folios instead of ten; and it is to be observed, that there was an order for taxation in the suit in June 1850, and I have no evidence to show that this item may not have been reduced under that order.

"Under these circumstances I can make no order on this petition, but at the same time I can give no costs."—*In re Browne*, 15 Beav. 61.<sup>4</sup>

## REMOVAL OF THE COURTS FROM WESTMINSTER

### TO THE VICINITY OF THE INNS OF COURT.

A PETITION has been prepared and passed under the seal of the Incorporated Law Society, on the part of the Attorneys and Solicitors, for the purpose of being pre-

sented to the House of Commons as early as possible, praying the House to take the very important subject of the removal of the Courts into its consideration, with a view to the erection of new buildings for the accommodation of the Judges, the Bar, the Solicitors, and Suitors, and generally for the more convenient administration of justice.

The petition sets forth the inconvenience of the present site at Westminster, away from the centre of the metropolis and the district where both branches of the Profession and all the offices of the Court are located. It also describes the defective construction of the existing Courts, their insufficient number, and lamentable want of accommodation, as well for the Public as the Profession, especially since the large addition made to the Equity Courts.

It is proposed that the new building should be in the neighbourhood of the Inns of Court, and combine under the same roof accommodation, not only for all the Courts, both of Law and Equity, but of the various Masters, Record Clerks, and other officers, and particularly the Chambers of the Equity Judges, their Chief Clerks, &c.

The site suggested lies between the Temple and Lincoln's Inn, having the Strand on the South, Carey Street on the North, Chancery Lane on the East, and Clement's Inn and New Inn on the West, being on the borders of the cities of London and Westminster, and forming on the North side of the new street intended to be made from the City to the West-end, on part of which is now erecting the State Record Office.

The petition points out the ways and means for effecting this great public and professional improvement from the following funds:—

1st. The *surplus* interest accumulated in the Court of Chancery, to which the suitors have no claim.

2nd. The accumulated fees since 1833.

3rd. The surplus fees of the Common Law Courts paid into the Treasury since 1838.

4th. The amount to be derived from the sale or letting of the numerous chambers, now occupied by the officers of the several Courts.

5th. The value of the site of the present Courts at Westminster.

6. The ground-rents, which may be obtained for such part of the site as will not be required for the Courts and offices, and which may be let or disposed of for professional chambers.

<sup>1</sup> *In re Neate*, 10 Beav. 183; in *re Harrison*, ib. 57.

<sup>2</sup> 7 Beav. 496.

<sup>3</sup> 2 Col. 92.

<sup>4</sup> Affirmed by the Lords Justices, Feb. 14, 1852.—See 1 De G. M. and Gor. 322.

## NEW ORDER IN CHANCERY.

### PAYMENT OF LEGACY DUTY ON FUNDS IN COURT.

*Monday, 31st January, 1853.*

I, the Right Honourable Robert Mounsey Lord Cranworth, Lord High Chancellor of Great Britain, do hereby order and direct in manner following, that is to say :—

That the Registrar, in drawing up any decree or order whereby the Accountant-General shall be directed to pay or transfer any fund, or part of any fund, in respect of which any duty shall be payable to the revenue under the Acts relating to legacy duty, shall, unless such decree or order expressly provide for the payment of the duty, direct the Accountant-General to have regard to the circumstance that such duty is payable; and where, by any decree or order, any carrying over to a separate account of any fund in respect of which any such duty may be chargeable shall be directed, the Registrar shall add the words "subject to legacy duty," to the title of the account. And in order the better to provide security against the payment or transfer by the Accountant-General of any fund chargeable with any such duty without the duty being first paid, the Accountant-General is, on receiving notice from the proper officer that the duty is payable, to cause a memorandum to be made in his books in conformity with such notice. And the Accountant-General, before executing any decree or order directing the payment or transfer of any fund or part of any fund in respect of which any such duty shall be payable, shall require the production of the official receipt for the duty, or a certificate from the proper officer of the payment of the duty chargeable in respect of any such fund or any portion thereof respectively by any such decree or order directed to be paid or transferred. And I do further order and direct that where, in making any decree or order express provision for the payment of any such duty shall be intended to be made, such duty shall, by such decree or order, be directed to be paid to the Receiver-General of Inland Revenue for the time being, or his official assistant duly constituted, to be named in the order.

(Signed) CRANWORTH, C.

### EXAMINATION OF CANDIDATES FOR THE ROLL OF ATTORNEYS.

#### NEW REGULATION AS TO THE LAW OF REAL PROPERTY AND CONVEYANCING.

THE mode of conducting the Examination, hitherto adopted by the Examiners, has been to propose fifteen questions on the principles and practice of each of the following branches of the law, viz.—1st, Common Law 2nd, Conveyancing; 3rd, Equity; 4th, Bankruptcy; and 5th, Cri-

iminal Law and proceedings before Magistrates.

The Examiners have hitherto required that the candidate for admission should satisfactorily answer a majority of the fifteen questions in the branches of Common Law and Equity; and also in one of the three other branches; thus making a satisfactory examination in Law and Equity indispensable, and leaving it optional with the candidates to answer in any one of the three other branches.

But looking to the great importance to the community that attorneys and solicitors should be well acquainted with the laws of real property, and qualified to prepare and superintend the due execution of wills, deeds, and other instruments, it is understood that the Examiners, with the sanction of the Lord Chief Justice of the Court of Queen's Bench, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer (to whom the regulation of the Examination is confided by the Statute), have determined in future to require the candidates to pass a satisfactory examination in the department of *Conveyancing*.

We believe that the Examiners will continue the practice of proposing questions in bankruptcy and in criminal law and proceedings before the magistrates, in order that candidates who may have given their attention to these subjects may have the advantage of answering such questions, and having the correctness of their answers in that department taken into consideration in summing up the merit of their general examination.

It is expected that the new regulation will be carried into effect in and after next *Michaelmas Term*.

### THE LAW STUDENT.

#### LECTURES AT THE INCORPORATED LAW SOCIETY.

*To the Editor of the Legal Observer.*

SIR,—I am a student in that large branch of the Profession, to which I understand you belong; and I am serving my clerkship in one of those eminent establishments in Lincoln's Inn, to the members of which are intrusted the most important interests and the most confidential affairs of the noblest and most affluent families.

I am desirous of acquiring a sufficient knowledge of my Profession, and for this purpose am endeavouring to combine *theory* with *practice*. During the day I am engaged in the business

of the office, and I devote some portion of my evenings to the reading of Blackstone and other authorities in the law. I try (though I confess not always successfully) to "rise betimes in the morning," and make myself master of some of the doctrines and principles of the law.

With these views I have been induced to attend the lectures of the Incorporated Law Society, and owe it to that institution to acknowledge that I have derived and continue to derive much advantage, as well from the labours of its learned lecturers, as from its extensive library. At these lectures it appears that not less than 200 articulated clerks attend each year, besides the members of the society. According to my observation, my brother articulated clerks who attend the lectures, are for the most part punctual, attentive, and diligent.

To every rule, however, there must be an exception, and in the course of the lectures which have been delivered during my time, a few, and only a few, instances have occurred in which some interruption has taken place, which appears to come from a disciple of the extraordinary sect called "Rap-ists," celebrated in "Household Words"—a class of persons who ought to be indicted for obtaining money on false pretences. The difference here, however, is, that the "Rap-ist" has no doubt paid his fee; but instead of partaking with his brethren of the legal fare placed before them, he "ever and anon," instead of taking a pinch of snuff, like the popinjay in Shakespeare's Henry IV., *raps* his pencil-case on the table, and interrupts the attention so generally bestowed by the rest of the audience.

Now, I beg to suggest to the worthy "Rap-ist," that he will oblige the other subscribers by reserving his talents for display in some of those resorts of the junior aspirants of the Profession, where such exhibitions of manual talent may be more "germain to the purpose" of amusement than the Hall of the Law Institution.

#### A SILENT STUDENT.

### SELECTIONS FROM CORRESPONDENCE.

#### SEARCHES IN PARISH REGISTERS.

It may not be generally known that the most eligible, and ultimately the least expensive mode of searching parish registers, is to address a letter to the Parish Clerks' Society, London, with the information required, and circulars are immediately transmitted to parish clerks in general. A fee is paid therewith, the whole or the chief part of which is paid to the parish clerk who is fortunate enough to find the register required. L.

#### INSOLVENTS' PROPERTY.—LIFE POLICY.

A. insures his wife's life, pays the premium for several years, and then takes the benefit of the Insolvent Debtors' Act. No notice is taken of the policy in his schedule. Afterwards the wife dies. Have the creditors any

right to the amount secured by the policy, either as property belonging to the insolvent at the time of seeking the benefit of the Act, or as subsequently acquired property?

AMICUS.

### SPRING CIRCUITS OF THE JUDGES.

*Mr. Baron Platt will remain in Town.*

#### NORFOLK.

*Lord Campbell, C. J., and Pollock, L. C. B.*

Monday, Feb. 28, Aylesbury.

Thursday, March 3, Bedford.

Monday, March 7, Huntingdon.

Monday, March 9, Cambridge.

Monday, March 14, Norwich and City.

Saturday, March 19, Bury St. Edmunds

#### MIDLAND.

*Jervis, L. C. J., and Parke, B.*

Monday, Feb. 21, Oakham.

Tuesday, Feb. 22, Northampton.

Saturday, Feb. 26, Lincoln and City.

Thursday, March 3, Nottingham and Town.

Tuesday, March 8, Derby.

Saturday, March 12, Leicester and Borough.

Friday, March 18, Coventry.

Saturday, March 19, Warwick.

#### HOME.

*Alderson, B., and Coleridge, J.*

Thursday, Feb. 24, Hertford.

Monday, Feb. 28, Chelmsford.

Monday, March 7, Maidstone.

Monday, March 14, Lewes.

Thursday, March 17, Kingston

#### NORTH WALES.

*Maule, J.*

Monday, March 14, Welchpool.

Thursday, March 17, Bala.

Saturday, March 19, Carnarvon.

Wednesday, March 23, Beaumaris.

Saturday, March 26, Ruthin.

Wednesday, March 30, Mold.

Saturday, April 2, Chester.

#### SOUTH WALES.

*Wightman, J.*

Wednesday, March 2, Swansea.

Wednesday, March 9, Haverfordwest and Town.

Monday, March 14, Cardigan.

Friday, March 18, Carmarthen.

Thursday, March 24, Brecon.

Wednesday, March 30, Presteign.

Saturday, April 2, Chester

#### NORTHERN.

*Cresswell, J., and Martin, B.*

Thursday, Feb. 17, Lancaster.

Monday, Feb. 21, Appleby.

Wednesday, Feb. 23, Carlisle.

Saturday, Feb. 26, Newcastle and Town.

Wednesday, March 2, Durham.  
Tuesday, March 8, York and City.  
Tuesday, March 22, Liverpool.

WESTERN.

*Erle and Crompton, JJ.*  
Saturday, Feb. 26, Winchester.  
Saturday, March 5, Salisbury.  
Thursday, March 10, Dorchester.  
Saturday, March 12, Exeter and City.  
Saturday, March 19, Bodmin.  
Saturday, March 26, Taunton.

OXFORD.

*Williams and Talfourd, JJ.*  
Monday, Feb. 28, Reading.  
Thursday, March 3, Oxford.  
Tuesday, March 8, Worcester and City.  
Saturday, March 12, Stafford.  
Monday, March 21, Shrewsbury.  
Thursday, March 24, Hereford.  
Tuesday, March 29, Monmouth.  
Saturday, April 2, Gloucester and City.

BARRISTERS CALLED.

*Hilary Term, 1853.*

LINCOLN'S INN.

Jan. 26.  
Henry Bonham Carter, Esq.  
George Norman Maule, Esq., M.A.  
Elphinstone Barchard, Esq., M.A.

INNER TEMPLE.

Jan. 26.  
Frederic Ross Vallings, Esq., M.A.  
Thomas Chandless, Esq., jun.  
Robert Geo. Moncrieff Sumner, Esq., M.A.  
Charles Dudley Robert Ward, Esq.  
Charles Samuel Bagot, Esq., B.A.  
William Finnie, Esq., B.C.L.  
John Bell Brooking, Esq.  
William Finch Edwards, Esq., M.A.  
James Christie Trail, Esq., B.A.  
Henry John Simonds, Esq.  
Franklin Lushington, Esq., M.A.  
Charles Penruddocke, Esq.  
Nathaniel Simpson, Esq.  
Felix Vincent Raper, Esq., B.A.  
William Pearson, Esq.

William George Harrison, Esq., B.A.  
John Lindsey Reed, Esq.  
Frederick Hoare Colt, Esq., B.A.  
William Ernst Browning, Esq.

MIDDLE TEMPLE.

Jan. 26.  
Edward Godman Kirkpatrick, Esq., B.A.  
Wilfrid Huddleston Simpson, Esq., B.A.  
Charles Smith, Esq., B.A.  
Stephen Martin Leake, Esq., B.A.  
William Talfourd Salter, Esq.  
Albany Fonblanque, Esq.  
Owen Saunders Wilson, Esq.  
John Henry Patteson, Esq., B.A.  
James Maurice, Esq.  
John Thornely, Esq., B.A.  
John William Grigg, Esq.  
Edward Macrory, Esq., B.A.  
Thomas M'Enteer, Esq.  
Robert Orridge, Esq.  
John Price, Esq.  
Edward William Hornby, Esq.  
Henry Stephen Hasler, Esq.  
Boswell Hensman, Esq.  
Roger Gadsden, Esq.  
George Pringle, Esq.

GRAY'S INN.

Jan. 26.  
Leonard Hill, Esq.

NOTES OF THE WEEK.

COLONIAL LAW APPOINTMENT.

THE Queen has been pleased to appoint *Philip Watson Braybrooke, Esq.*, to be a District Judge and Commissioner of Requests of Badulla, in the Island of Ceylon.—From the *London Gazette* of the 4th of February.

LAW PROMOTION.

This day (7th of February) the Right Honourable *Charles Pelham Villiers* (Judge-Advocate General), was, by her Majesty's command, sworn of her Majesty's most Honourable Privy Council, and took his place at the Board accordingly.—From the *London Gazette* of the 8th of February.

RECENT DECISIONS IN THE SUPERIOR COURTS  
AND SHORT NOTES OF CASES.

Lord Chancellor.

*In re Cumming.* Jan. 14, 1853.

SUPERSEDEAS OF COMMISSION OF LUNACY.  
—TERMS OF COMPROMISE.—EXTENDING  
TIME FOR TRAVERSING.

*The Court refused a petition seeking a supersedeas of a commission, upon terms arranged for the lunatic's income, &c. But the time was enlarged for another six months within which the traverse should be tried, where it had expired pending such arrangements.*

THIS was a petition for a supersedeas of the commission of lunacy, and for the taxation of the costs as between solicitor and client, to be secured by mortgage of the property of Mrs. Cumming, but it was not to be paid until after her death, and she was to have an income of 400*l.* a year secured exclusively of her residence. The residue of her property after payment of her debts, &c., to go at her death among her two daughters.

The Solicitor-General and Southgate for Mrs Cumming; Follett and W. Morris for the next of kin.



The Lord Chancellor said, that a supersedeas restricted as proposed could not be granted, as Mrs. Cumming, if of sound mind, was entitled of right to a supersedeas, or if she were insane she was not entitled to it. The petition must therefore be refused, but as the time within which the traverse should be tried had expired, it would be enlarged for another six months.

Feb. 8.—*In re Bulmer, ex parte Johnson*—Hearing of petition fixed for Feb. 23.

—8.—*In re Dover and Deal Railway Company, ex parte Mowatt and another*—Appeal allowed from Vice-Chancellor Kindersley.

—8.—*Little v. Newport Railway Company*—Compromise come to.

### Master of the Rolls.

*Lovell v. Galloway.* Jan. 20, 1853.

BILL OF DISCOVERY.—INJUNCTION.—INTERROGATORIES.

*Motion dismissed, with costs, for an injunction on a bill of discovery for want of answer, where the plaintiff had not filed interrogatories with his bill.*

R. Palmer and Druce appeared in support of this motion for an injunction for want of answer to this bill for a discovery.

Roupell and W. Hislop Clarke, contra, on the ground the plaintiff had not filed interrogatories with his bill.

The Master of the Rolls said, that the defendant was not in default for want of answer, as the plaintiff had not filed any interrogatories, and dismissed the motion accordingly, with costs.

*Gordon v. Jasson.* Jan. 31, 1853.

JURISDICTION OF EQUITY IMPROVEMENT ACT.—WHERE NEW ASSIGNEE APPOINTED OF DEFENDANT.—SUPPLEMENTAL ORDER.

*The usual supplemental order was made under the 15 & 16 Vict., c. 86, s. 51, upon the death before answer of the defendant's official assignee, and appointment of a new assignee.*

*But held, that such order should be of course, and that no affidavit is necessary in support of the application.*

THIS was a motion under the 15 & 16 Vict. c. 86, s. 51, for the usual supplemental order in this case, where the defendant, who was the official assignee of a bankrupt, had died before answer, and another assignee had been appointed.

Beavan, in support, referred to the 12 & 13 Vict., c. 106, s. 157, which enacts that "whensoever an assignee shall die or be removed, or a new assignee shall be chosen, no action at law or suit in equity shall be thereby abated, but the Court in which any action or suit is de-

pending, may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new assignee to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees, in the same manner as if he had originally commenced the same."

The Master of the Rolls said, that no affidavit was necessary in support of the application, and made the order as asked, but intimated that in future similar orders might be obtained as of course.

Feb. 8.—*Shrewsbury and Birmingham Railway Company v. London and North Western Railway Company and others*—Bill dismissed, without costs.

### Vice-Chancellor Kindersley.

*Edmonson v. Harrison.* Jan. 26, 1853.

STOP ORDER.—PETITION BY MARRIED WOMAN.—NEXT FRIEND.—PRACTICE.

*Held, that the petition for a stop order on behalf of a married woman must show how the petitioner was separately entitled, and must be presented by her next friend, but held that in future where the assignor and assignee consented, the order would be made at Chambers.*

THIS was a petition for a stop order on behalf of a married woman, suing without a next friend. The assignor and assignee consented.

Nelson in support.

The Vice-Chancellor said, the petition must be amended to show how the petitioner was separately entitled, and also to add a next friend. But in future the order would be made on summons at Chambers where no objection was made, and the assignor and assignee consented.

Jan. 31, 1853.

MOTIONS ON LAST DAY OF TERM.—PRACTICE.

*Held, that it is competent to the Court on the last day of Term, after the junior bar have moved the unopposed motions and been called upon to proceed with those which were opposed, after the Queen's counsel present had been gone through, to call upon the Queen's counsel as they make their appearance in Court to proceed with their motions, notwithstanding there remain motions to be made by the outer bar.*

*In re Randall's Trust.* Feb. 8, 1853.

TRUSTEE ACT, 1850.—APPOINTMENT OF PERSON TO CONVEY TO NEW TRUSTEES.—SOLE TRUSTEE.

*Three trustees were appointed by will, one died and another was in America and was not known whether to be alive or not. A vesting order had been obtained for the sur-*

*giving trustee in this country to convey to new trustees appointed, but before conveyance he died: Held, that inasmuch as it was not shown whether such trustee in America was the surviving, and therefore sole, trustee, an order could not be made under s. 22 of the 13 & 14 Vict. c. 60, for the appointment by the Court of a person to convey to the new trustees.*

THIS was an application for a vesting order under the 13 & 14 Vict. c. 60, s. 22. It appeared that the testator had appointed three trustees by his will, and that one had died, and a second was in America and was not known whether to be alive or not. An order had been made on a petition presented in October last, vesting the right in the surviving trustee to transfer the fund in certain persons appointed as new trustees, but, pending the proceedings, such trustee died.

Cole, therefore, now applied for an order vesting the right to transfer the fund in some person to be appointed by the Court under s. 22, which provides, that "when any sole trustee of any stock or chose in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in any person or persons the said Court may appoint."

The Vice-Chancellor said, that as it was not shown whether the trustee who was abroad was to be considered the surviving, and therefore sole, trustee, the case was not within the act, and the application must be refused.

Feb. 8.—*Turner v. Blamire*—Part heard.

Vice-Chancellor Stuart.

*Smith v. Robinson.* Jan. 20, 1853.

FORECLOSURE CLAIM. — ORDER FOR SALE UNDER THE EQUITY JURISDICTION IMPROVEMENT ACT.

*On a claim by a mortgagee against the parties entitled to the equity of redemption, an immediate order was refused for a sale, under the 15 & 16 Vict. c. 86, s. 48, where such parties did not appear although served with notice of motion, but the account was directed to be taken at Chambers, and for the appointment of a time within which payment should be made, or a sale be ordered.*

THIS was a motion for a sale, under the 15 & 16 Vict. c. 86, s. 48, in this claim on behalf of a mortgagee, against the parties entitled to the equity of redemption, for payment of the mortgage money, and sale or foreclosure. Notice of motion had been served on the defendants.

Shapter in support.

The Vice-Chancellor said, that it would be rather harsh to order an immediate sale in the

absence of the parties entitled to the equity of redemption, and directed an account to be taken before the chief clerk at Chambers, of the mortgage debt and interest and costs, and for a time to be appointed within which payment must be made or a sale be ordered in default.

Feb. 8.—*Efooks v. London and South Western Railway Company*—Motion refused, with costs, for injunction.

Vice-Chancellor Wood.

*Bernasconi v. Atkinson.* Jan. 14, 18, 1853.

WILL.—CONSTRUCTION.—MISDESCRIPTION IN NAME.—EVIDENCE AS TO DESCRIPTION.

*A testator devised certain property to his first cousin, Vincent B., son of his late uncle, Peter B. It appeared that the plaintiff was named George Vincent B., and was the son of Joseph Vincent B., but there was an uncle named Peter Alexander B., who had two sons, Alexander and the defendant Frederick. The plaintiff was commonly known as Vincent B., and was on terms of intimacy with the testator, but the defendant was not: Held, that evidence could not be received to show the description of the plaintiff as the son of Peter, was inserted by the solicitor without the testator's directions, but that it sufficiently appeared from the will, without such evidence, that the plaintiff was intended.*

THE testator, by his will, dated in April, 1852, gave his residuary personal estate to his sister and his first cousin, Vincent Bernasconi, son of his late uncle, Peter Bernasconi. It appeared that the plaintiff was named George Vincent Bernasconi, and was generally known as Vincent Bernasconi, but his father's name was Joseph Vincent Bernasconi. There was an uncle named Peter Alexander Bernasconi, who had two sons, Alexander and the defendant Frederick. The plaintiff was on terms of intimacy with the testator, but Frederick was not on terms of visiting at his house, and Alexander was abroad and had not been heard of for many years. It was shown that the description as to Vincent being the son of Peter, had been introduced by the solicitor, who prepared the will without any direction from the testator.

Rolt and C. Chapman Barber for the plaintiff; Tripp for the defendant; Freeling for the next of kin; Dawney for the widow; W. M. James for the executors.

Cur. ad. vult.

The Vice-Chancellor said, that the evidence as to the introduction by the solicitor of the words in question, could not be received. But the Court would look at all the circumstances, in order to see whether the words taken in their natural sense pointed more strongly to one person than to another. There was no evidence the testator had any special regard for

his uncle Peter, or desired to make provision for his family, but it was more probable from the evidence of his knowledge and acquaintance with the plaintiff, that he regarded him personally and attended to his name, rather than to his description. The plaintiff must therefore be taken to be the person intended, and to be entitled to a decree.

*Kennedy v. Kennedy.* Feb. 8, 1853.

**WILL. — CONSTRUCTION. — DISCRETION IN WIDOW TO SELECT ARTICLES FOR HER OWN USE.**

*A testator devised everything in his house and elsewhere to his wife, his brother, and W., and the survivor of them, upon trust for the following purposes, namely:—"I desire that, as soon after my decease as may be practicable or advisable, all my household property, as aforesaid, may be disposed of by public sale, or otherwise as to the said trustees may seem fitting, with the exception of such articles, whatever they may be, that my dear wife may desire to retain for her own use, which I hereby empower her to appropriate to her own use."* Held, that her right of selection was not confined to articles to be consumed by her, or of personal ornament, but extended to pictures, statues, &c., and that she was entitled to the selected articles absolutely, and not for life only.

A TESTATOR, by his will, gave, devised, and bequeathed "all and every my household furniture, linen, wearing apparel, books, plate, wines, pictures, statues, china, horses, carriages, in short, everything in my house or elsewhere, also any sum or sums of money which may be in my house, or be due to me at the time of my decease, also, all my stocks, funds, and securities for money, book debts, money due on bonds, bills, notes, or other securities, and all and every other my estate and effects, whatsoever and wheresoever, both real and personal, whether in possession or reversion, remainder, or expectancy, unto my dear wife, Alicia, my dear brother, Charles, and J. P. Williams, and the survivor of them, and the executors and administrators of such survivor, upon trust, for the following purposes, namely:—"I desire that, as soon after my decease as may be practicable or advisable, all my household property, as aforesaid, may be disposed of by public sale, or otherwise, as to the said trustees may seem fitting, with the exception of such articles, whatever they may be, that my dear wife may desire to retain for her own use, which I hereby empower her to appropriate to her own use."

*Bacon and H. R. V. Johnson*, for the widow, claimed an unlimited power of selection; *Roll and Welford*, for the children, the plaintiffs, contended it was confined to wines, &c., to be consumed by her, or to articles of personal ornament, but not to pictures, statues, &c.

*J. V. Prior* for the trustees; *Vance* for other parties.

The Vice-Chancellor said, that the testator intimated a confidence in his wife that she would not desire to take the whole, but would make a selection, but the Court could not make any distinction as to articles of mere ornament, such as statues, not being intended as the testator most probably considered his house would be disposed of, with the exception of such articles as might be of use in any other house the widow might occupy, and those articles could not be said to be of no use in the station she occupied. And as they were excepted from the direction for sale, she was entitled to them absolutely.

Feb. 8.—*Butchart v. Dresser*—Part heard.

**Court of Queen's Bench.**

*Sill v. Reginam.* Jan. 26, 1853.

**CONVICTION FOR OBTAINING MONEY UNDER FALSE PRETENCES.—OWNERSHIP OF PROPERTY.—INDICTMENT.**

*Held, that it is necessary in an indictment for obtaining money under false pretences to allege in whom is the ownership of the property alleged to have been obtained, and that such omission is not cured by the 14 & 15 Vict. c. 100, ss. 8, 25, and the conviction was therefore reversed.*

*Hodgson* appeared in support of a writ of error from an indictment for obtaining money under false pretences, on the ground that it did not contain an allegation of the ownership of the property alleged to have been so obtained. He cited *Regina v. Norton*, 8 Car. & P. 196; *Regina v. Martin*, 8 A. & E. 481.

*Metcalfe* in support of the conviction, referred to the 14 & 15 Vict. c. 100, s. 8, which enacted, that "from and after the coming of this Act into operation, it shall be sufficient in any indictment for forging, uttering, offering, disposing of, or for obtaining or attempting to obtain any property by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial of any of the offences in this section mentioned, it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud," and to s. 25.

The Court said, the Act did not cure the defect in the description of the ownership of the property which was still required, and that the plaintiff in error was entitled to judgment.

*In re James Thomas Russell.* Jan. 12, 1853.

**ATTORNEY.—CONVICTION FOR OBTAINING MONEY BY FALSE PRETENCES.—STRIKING OFF ROLL.**

*An attorney was struck off the Roll, who had been convicted of obtaining money under*

*false pretences, and had been sentenced to six calendar months' imprisonment with hard labour.*

A RULE nisi had been obtained on Nov. 9 last, at the instance of the Incorporated Law Society to strike off the Roll of Attorneys James Thomas Russell, who had been convicted, on Sept. 13 last, of unlawfully obtaining by means of false pretences from Lawrence Langlands the sum of 12*l.* of the moneys of Timothy Barnard, and ordered to be imprisoned and kept to hard labour in the House of Correction at Wandsworth for the space of six calendar months. The rule had, on the application of Mr. Russell, been enlarged on 25th November to the 1st day of the present Term.

Hawkins showed cause against the rule, which was supported by James Wilde, for the Incorporated Law Society.

The Court ordered Mr. Russell to be struck off the Roll of Attorneys of the Court.

Feb. 4, 5.—*Lumley v. Gye*—Cur. ad. vult.

— 5.—*Leverick v. Mercer*—Judgment for the plaintiff.

— 5.—*Regina v. Waghorn*—Judgment for the defendant.

— 5.—*Regina v. Justices of Middlesex*—Rule absolute for mandamus.

#### Court of Common Pleas.

*Volant v. Soyer and another.* Jan. 14, 1853.

ACTION FOR SERVICES TO DEFENDANTS.—EVIDENCE OF DISSOLUTION OF PARTNERSHIP.—DEED OF ASSIGNMENT.—RECEIPT.

*On the trial of an action brought by a clerk to recover for services to the defendants, one of the latter called for the production of a deed of assignment of the property in order to show a termination of their partnership. The assignee's solicitor was held not bound to produce the deed. And the jury having found that a receipt, which was tendered to prove payment of the plaintiff's salary to the present time had been altered since its signature by the plaintiff, the Court also refused a new trial on the ground of surprise.*

THIS was a motion for a new trial of this action which was brought to recover the sum of 54*l.* 18*s.* for services rendered to the defendants as their clerk. On the trial, before Lord Chief Justice Jervis, at the Middlesex Sittings after Michaelmas Term last, the defendant, Symons, called for the production of a deed of assignment, in order to show that his partnership with the defendant, Soyer, had been determined, but upon the refusal to produce it of the attorney to the assignee, who was not party to the action, a receipt signed by the plaintiff was put in evidence to show the plaintiff's salary had been paid to the 5th Nov., 1851. The jury having found that the words "up to this date" had been added since the

plaintiff signed the receipt, and returned a very dict for the plaintiff, this rule was moved for on the ground of surprise and the rejection of evidence.

Horn in support.

The Court said, the deed had been properly protected from being produced, and refused the motion accordingly.

#### Court of Exchequer.

*Scothorn v. South Staffordshire Railway Company.* Jan. 22, 1853.

CARRIERS.—LIABILITY TO DELIVER GOODS ACCORDING TO ALTERED DIRECTIONS OF OWNER.

*The plaintiff directed certain goods to be delivered on board a vessel by the defendants, but on their arrival in London he directed their delivery elsewhere. The defendants delivered by mistake in accordance with the original directions. The vessel having been lost with the goods, held that the defendants were liable, and a rule was discharged to set aside a verdict for the plaintiff and to enter a nonsuit, in an action to recover their value.*

THIS action was brought to recover the value of certain goods which had been delivered to the defendants in Staffordshire, to be conveyed to London, in order to be delivered on board the ship Melbourne, then about to proceed to Australia. It appeared, however, that upon the arrival of the goods in London, directions were given to the defendants' agent to deliver the goods at another place named in London, instead of as originally intended, but that the goods were delivered by mistake on board the vessel, and upon its being lost, this action was brought. On the trial before Martin, B., the plaintiff obtained a verdict, and a rule nisi had been obtained to set it aside and enter a nonsuit.

James and Hawkins showed cause; Bramwell and Gray in support.

The Court said, that as the defendants had not carried out the plaintiff's directions, which he might at any time give as to the ultimate disposition of the goods, they were liable for their loss, and the rule was therefore discharged.

#### Court of Exchequer Chamber.

Feb. 2.—*Heyling v. Grey and others*—Decision affirmed of the Court of Exchequer.

— 2.—*James v. Cochrane and others*—Decision of the Court of Exchequer affirmed.

— 3.—*Rimington v. Cannon*—Cur. ad. vult.

— 2, 7.—*London and South Western Railway Company v. South Eastern Railway Company*—Judgment affirmed of the Court of Exchequer.

— 7.—*Oldfield v. Dodd and another*—Judgment reversed, on appeal from Court of Exchequer.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## LAW OF PATENTS.

## DISCLAIMER.

*Admissible in evidence, though filed and enrolled after issue joined.*—Title of patent in accordance with specification.—A count in a *scire facias* to repeal a patent granted to the defendant "for improvements in instruments used for writing and marking, and in the construction of inkstands," contained suggestions (amongst others) of want of novelty and utility in "a certain part" of the said invention. The objections filed with the declaration, pursuant to the 5 & 6 Wm. 4, c. 83, s. 5, pointed out the sixth claim in the specification (amongst others) as wanting novelty and being useless. The pleas traversed all the suggestions in the count.

*After issue joined*, the defendant filed a disclaimer, under the 5 & 6 Wm. 4, c. 83, s. 1, of the 5th, 6th, 7th, and 8th claims mentioned in his specification. These claims related to pens and to instruments used for marking with a stamp. Those which remained untouched by the disclaimer were for improvements in pen-holders and pencil-cases and in the construction of inkstands.

*Held*, 1st, that the disclaimer, though filed and enrolled after issue joined, was admissible in evidence, and was to be read as part of the original specification, and need not be pleaded *quis darrein continuance*.

2ndly, That the objections filed pursuant to s. 5 were not part of the record, so as to form parcel of the issues to be tried.

3rdly, That the disclaimer being received, the defendant was entitled to a verdict upon all the issues.

4thly, That the title of the letters patent was satisfied by the specification as amended by the disclaimer. *Regina v. Mill*, 10 C. B. 379.

Case cited in the judgment: *Perry v. Skinner*, 2 M. & W. 476.

## IMPROVEMENTS ON KNOWN PROCESS.

A claim for a patent for improvements in the mode of doing something by a known process, is sufficient to entitle the claimant to a patent for his improvements, when applied either to the process as known at the time of the claim, or to the same process altered and improved by discoveries not known at the time of the claim, so long as it remains identical with regard to improvements claimed, and their application. *Electric Telegraph Company v. Brett*, 10 C. B. 838.

See *Infringement*.

## INFRINGEMENT.

1. *Combination of new and old materials.*—Where a patent is granted for a combination of several things, some of which are old and some new, the question of novelty depends upon whether that which is claimed in the specification as a whole is new.

And a person who, by some chemical or me-

chanical equivalent, imitates a part of such combination which is new and useful, is guilty of an infringement of the patent. *Newton v. Grand Junction Railway Company*, 5 Exch. R. 331.

2. *Construction of specification.*—In case for the infringement of a patent "for improvements in giving signals and sounding alarms in distant places, by means of electric currents transmitted through metallic circuits," the breaches alleged in the declaration were, that the defendant had used and counterfeited the said invention: the evidence was, that the defendant had used or counterfeited part only. The specification described *some* several improvements: *Held*, that the declaration, in speaking of the said invention, was to be understood as charging the using or counterfeiting of the said *some* improvements, and that it was sufficiently proved by showing that one of them had been used.

The patentees' invention was described, as well in the title of the letters patent as in the specification, as an invention of "improvements in giving signals and sounding alarms in distant places by means of electric currents transmitted through metallic circuits." The defendant, it appeared, arrived at the same results by using a circuit not wholly or continuously metallic throughout, but by using the earth to an extent nearly amounting to the half, as the connecting medium between two portions of the metal. It appeared in evidence, that after the grant of the letters patent, it had been discovered that a large portion of the wire through which the electric current returned to the battery might be dispensed with, by plunging into the earth the two ends of wire which would have been joined by the parts left out, the electric current passing from one end of the wire to the other as effectually as if a continuity of wire had been kept up: *Held*, that, though a circuit upon this principle would not be wholly metallic, yet, inasmuch as it was so in all that part which formed the substance of the patentees' claim,—viz., that part which gave the signals, it amounted to an infringement of the patentees' right.

The patent was for an improved method of giving signals, by means of several wires and conveying needles pointing to letters. The defendant had used one wire, and had made signals by counting the deflections of a needle or needles,—which was found by the jury to be a different system from that of the plaintiffs: *Held*, that, notwithstanding this finding, the plaintiffs were entitled to the verdict; for, that the specification showed that the patent was not for a system of giving signals, but for certain distinct and specified improvements, comprehending those in question,—the system being described only for the purpose of explaining the improvements claimed.

One of the patentees' improvements was de-

scribed as an improvement "whereby a set of combined conducting wires, as aforesaid, having a voltaic battery, and a set of buttons or finger keys, and also a dial with vertical needles, for giving signals, as well as an apparatus for sounding alarms at each end of the set, may also have duplicates of such dials, with needles and apparatus for alarms, at intermediate places between the two ends, all such duplicates operating simultaneously with each other, and with the two end dials and alarms, to give like signals and to sound like alarms." The jury found that "the sending of signals to intermediate stations was new to the plaintiffs," that is, was a new invention of the patentees: *Held*, that this was the fit subject of a patent; for, though it might be probable, *a priori*, that a circuit having a distant coil could have intermediate ones also, which would operate in the same manner, still it was a matter of experiment that it could practically be done.

*Held*, also, that the patentees' claim was not affected by the circumstance of the defendant's having improved upon it, so as to enable those at the intermediate stations to send as well as to receive communications. *Electric Telegraph Company v. Brett*, 10 C. B. 838.

See *Improvement : Specification*, 3.

#### REPEALING PATENT.

*Sci. fa.*—*Plea in abatement.*—*Assignment of share.*—In *sci. fa.* against A. and B. to repeal a patent granted to A. and B., A. cannot plead in abatement that B. assigned all his share and interest in the patent to A., before the writ was sued out, and has not since had any interest therein.

Per Lord Campbell, C. J., and Erle, J. If, in fact, the party having no interest was joined in order that he might collusively prejudice the other defendant, application should be made to the Court for remedy, as against an abuse of process. *Regina v. Belts*, 15 Q. B. 540.

#### SPECIFICATION.

1. *Description of mode of conducting operation.*—A specification of a patent for "a new and improved method of obtaining the spontaneous re-production of all the images received on the focus of the camera obscura," in describing the process, stated it to be divided into five operations:—"The first consists in polishing and cleaning the silver surface of the plate, in order to properly prepare or qualify it for receiving the sensitive layer or coating (iodine) upon which the action of the light traces the design; the second operation is, the applying that sensitive layer or coating to the silver surface; the third, in submitting in the camera obscura the prepared surface or plate to the action of the light, so that it may receive the images; the fourth, in bringing out or making appear the image, picture, or representation, which is not visible when the plate is first taken out of the camera obscura; the fifth and last operation is, that of removing the sensitive layer or coating, which would continue to be affected and undergo different changes from the action of light,—this would

necessarily tend to destroy the design or tracing so obtained in the camera obscura." It then proceeded to give a description of the first operation,—preparing the silver surface of the plate; the concluding part of which directed that nitric acid dissolved in water should be applied three different times, the plate being each time sprinkled with pounce and lightly rubbed with cotton; adding—"When the plate is not intended for immediate use or operation, the acid may be used only twice upon its surface after being exposed to heat: the first part of the operation, that is, the preparation as far as the second application of the acid, may be done at any time; this will allow of a number of plates being kept prepared up to the last slight operation: it is, however, considered indispensable, that, just before the moment of using the plates in the camera, or the re-producing the design, to put at least once more some acid on the plate, and to rub it lightly with pounce, as before stated; finally, the plate must be cleaned with cotton from all pounce dust which may be on the surface, or its edges." In a subsequent part of the specification, having described the second operation,—*viz.*, the application of the iodine, the inventor observed:—"After this second operation is completed, the plate is to be passed to the third operation, or that of the camera obscura; whenever it is possible, the one operation should immediately follow the other."

*Held*, that, taking the whole specification together, the direction as to the third application of acid, was not to be understood to be a direction to apply the acid after the second operation,—*viz.*, the coating the plate with iodine,—which, it was proved, would render the whole process abortive, but to apply it as part of the first operation; and that the specification gave sufficient information to an operator of reasonable skill. *Beard v. Egerton*, 8 C. B. 165.

Cases cited in the judgment: *Russell v. Cowley*, 1 C. M. & R. 864; *Neilson v. Harford*, 8 M. & W. 825; *McAlpine v. Mangnall*, 3 C. B. 496.

2. *Construction of.*—In the construction of a specification, the whole instrument must be taken together, and a fair and reasonable interpretation given to the words used in it. *Beard v. Egerton*, 8 C. B. 165.

3. *Combination of new and old machinery.*—*Infringement.*—In the specification of a patent for "improvements in looms for weaving," the plaintiff declared that his improvements applied to that class of machinery called power-looms, and consisted in a novel arrangement of mechanism, designed for the purpose of instantly stopping the whole of the working parts of the loom whenever the shuttle stops in the shed." He then described the manner in which that was done in ordinary looms, and proceeded thus:—"The principal defect in this arrangement, and which my improvement is intended to obviate, is the frequent breakage of the different parts of the

loom, occasioned by the shock of the lathe or slay striking against the 'frog,' (which is fixed to the framing). In my improved arrangement the loom is stopped in the following manner:—I make use of the 'swell' and the 'stop-rod finger' as usual; the construction of the latter, however, is somewhat modified, being of one piece with the small lever which bears against the swell; but instead of its striking against a stop or 'frog' fixed to the framing of the loom, it strikes against a stop or notch upon the upper end of a vertical lever, vibrating upon a pin or stud. The lever is furnished with a small roller or bowl, which acts against a projection on a horizontal lever, causing it to vibrate upon its centre and throw a clutch-box (which conducts the main driving pulley to the driving shaft) out of gear, and allows the main driving pulley to revolve loosely upon the driving shaft at the same time that a projection on the lever strikes against the 'spring handle,' and shifts the strap: simultaneously with these two movements the lower end of the vertical beam causes a break to be brought in contact with the fly-wheel of the loom, thus instantaneously stopping every motion of the loom without the slightest shock." After the date of the plaintiff's patent, the defendant obtained a patent for "improvements in and applicable to looms for weaving;" and amongst them he claimed a novel arrangement of apparatus for throwing the loom out of gear when the shuttle failed to complete its course. In the defendant's apparatus, the clutch-box was not used; but, instead of it, the stop-rod finger acted on a loose piece or sliding frog; and instead of a rigid vertical lever, as in the plaintiff's machine, the defendant used an elastic horizontal lever. and by reason of the pin travelling on an inclined plane, the break was applied to the wheel gradually, and not simultaneously. The jury found that the plaintiff's arrangement of machinery for stopping looms by means of the action of the clutch-box, in combination with the action of the break, was new and useful; also, that the plaintiff's arrangement of machinery for bringing the break into connexion with the fly-wheel, was new and useful: and that the defendant's arrangement of machinery for the latter purpose was substantially the same as the plaintiff's; *Held*, upon these findings,—1st, that the specification was good; 2ndly, that the defendant had infringed the patent. *Sellers v. Dickinson*, 5 Exch. R. 312.

See *Disclaimer; Infringement*.

## BANKRUPTCY AND INSOLVENCY.

### AFFIDAVIT OF DEBT.

1. *What such an affidavit to make a trader a bankrupt, that perjury may be assigned upon it.*—*Held*, in the Queen's Bench and by the Court of Exchequer Chamber, affirming the judgment of Queen's Bench, that,

Where an affidavit of debt has been sworn under Stat. 1 & 2 Vict. c. 110, s. 8, with a

view to make a trader a bankrupt, unless he pays or gives security, &c., perjury may be assigned upon it, notwithstanding the alterations introduced by Stat. 5 & 6 Vict. c. 122, as to this mode of proceeding against a trader. And that

Such an affidavit falls within sect. 67 of Stat. 5 & 6 Vict. c. 122, which provides, that all affidavits made under any statute "relating to bankrupts" may be sworn before a registrar or deputy registrar of the Court of Bankruptcy. *Regina v. Dunn*, 12 Q. B. 1,026; *Dunn v. Reginam*, ib. 1,031.

2. *Reasonable and probable cause.*—*Costs.*—Under Stat. 12 & 13 Vict. c. 106, s. 86, a plaintiff who has made an affidavit of debt against a defendant, a trader, and recovered less than the amount sworn to, will be ordered to pay the costs to defendant, as having made the affidavit without reasonable or probable cause, if he has sworn to his own claim without allowing for a counter-claim of defendant arising on the same transaction. *Marshall v. Sharland*, 15 Q. B. 1,051.

### ASSIGNEES' RIGHTS.

1. *Set-off.*—*Mutual credits.*—A plea of mutual credit by way of set-off, cannot be pleaded to a declaration by assignees, charging the defendants with having received a sum of money from the bankrupt for the purpose of meeting a certain acceptance, and neglecting so to apply it, whereby the bankrupt's estate sustained damage,—the claim being for *unliquidated damages*. *Bell v. Carey*, 8 C. B. 887.

Cases cited in the judgment: *Drake v. Beckham*, 11 M. & W. 315; 2 H. of L. 579; *Mazetti v. Williams*, 1 B. & Ad. 415.

2. *Action against attorneys for negligence passes to assignees.*—*A.*, a benefited clergyman, brought case against his attorneys for having, through their negligence and want of skill, permitted a writ of *sequestrari facias* to remain in force against him longer than was necessary, whereby *A.*, during that time, lost the rent, tithes, and profits of his living: *Held*, that this was a cause of action which passed to *A.*'s assignees, upon his insolvency. *Wetherell v. Julius*, 10 C. B. 267.

Cases cited in the judgment: *Rogers v. Spence*, 12 Cl. & F. 700; *Beckham v. Drake*, 2 H. of L. 579.

3. *Cause of action not passing to assignees.*—*Expense in endeavouring to procure release.*—*A.*, being sued by *B.*, retained *C.*, an attorney, to defend him. By *C.*'s negligence, a judgment was obtained against *A.*, upon which he (being then in custody) was charged in execution for a large sum, and was put to expense in endeavouring to procure his release, and to reverse the judgment, by writ of error: *Held*, that this was not a cause of action which passed to *A.*'s assignees upon his insolvency. *Wetherell v. Julius*, 10 C. B. 267.

### BILL OF SALE.

The 61st section of the 1 & 2 Vict. c. 110,

does not apply to bills of sale which convey the property absolutely, but only to an executory bill of sale. *Hardy v. Tingey*, 5 Exch. R. 294.

#### CERTIFICATE.

*Taking bankrupt in execution under 12 & 13 Vict. c. 106, s. 257.*—*Refusing certificate of conformity.*—*Second certificate for execution under same order.*—When the Court of Bankruptcy has, on the bankrupt's last examination, made an order refusing a certificate of conformity under Stat. 12 & 13 Vict. c. 106, s. 256, and a certificate has been thereupon granted to the creditor for the purpose of taking the bankrupt in execution under sect. 257, this Court will not inquire whether the order was made under circumstances bringing the case properly within one of the grounds of refusal stated in sect. 256.

Although the order itself states the certificate to have been refused because the bankrupt "concealed some of his property," whereas the offence described in sect. 256 is, concealing with intent to diminish the dividend or give an undue preference.

After the bankrupt has been imprisoned on certificate granted to a creditor under such order of the Court of Bankruptcy, and discharged, another creditor may obtain and enforce a certificate under the same order.

It is no objection to the creditor's certificate that the application for it was made without notice to the bankrupt, and not at a public meeting. For the granting of such certificate is only a ministerial act. *In re Cowgill*, 16 Q. B. 336.

#### CERTIFICATE FOR PROTECTION.

*Under Stat. 7 & 8 Vict. c. 70.*—Where, under Stat. 7 & 8 Vict. c. 70, creditors have accepted a petitioning debtor's proposal, and this has been certified by a Commissioner in Bankruptcy, and he has indorsed a protection on the certificate under sect. 6, this only protects from arrest, and cannot be pleaded in bar of an action brought by a creditor who has had notice. *Blackford v. Hill*, 15 Q. B. 116.

#### COMPOSITION WITH CREDITORS.

1. *Proof of plea of.*—The averment in a plea, that the defendant offered and agreed with the plaintiff and divers of the said other creditors (the plea having previously stated that the defendant was indebted to the plaintiff and divers other persons), "to pay to them respectively, and that the plaintiff and the said last mentioned other creditors agreed together to accept a certain composition for the payment of the defendant's debts,—is satisfied by proof of some of the creditors having entered into that agreement. *Norman v. Thompson*, 4 Exch. R. 755.

2. *Construction of agreement.*—An agreement entered into between a debtor and any number of his creditors less than the whole number, to take a composition for their debts, is binding upon those who enter into the agreement. *Norman v. Thompson*, 4 Exch. R. 755.

#### DEBTORS' ARRANGEMENT ACT.

1. *Form of certificate under.*—A certificate under the Debtors' Arrangement Act (7 & 8 Vict. c. 70, s. 13), must certify the filing of the petition, and not merely that a resolution or agreement was duly assented to, and approved, and filed by the Commissioner.

*Quære*, whether a certificate under this Act requires confirmation,—or whether a plea setting-up such a certificate, need show that the debt is not of the excepted classes mentioned in section 2? *Temple v. Sleight*, 9 C. B. 348.

2. *Under 12 & 13 Vict. c. 106, s. 224.*—*Pleading.*—The 224th section of the Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, makes a deed of arrangement, if executed by or on behalf of six-sevenths in number and value of the creditors of the trader, under certain circumstances, binding on the whole body: *Held*, that a plea setting forth a deed of that description, and stating that the creditors who executed it were "more than six-sevenths, to wit, nine-tenths in number and value," was sufficient, on special demurrer, and not open to the objection of argumentativeness or immateriality. *Stewart v. Collins*, 10 C. B. 634.

3. *Certificate of protection from arrest.*—The certificate given to a petitioning trader, under the 12 & 13 Vict. c. 106, s. 216, only protects him from arrest at the suit of persons being creditors at the date of the petition, and who have received the notices required by that Act.

Therefore, where the acceptor of a bill of exchange petitioned under the arrangement clauses of that Act, and gave the requisite notice to the drawer, whom he supposed to be the holder of the bill: *Held*, that the certificate did not protect him from execution on a judgment in an action by an indorsee of the bill. *Levy v. Horne*, 5 Exch. R. 257.

#### "DEBTS GROWING DUE."

Under the 69th section of the Insolvent Act, 1 & 2 Vict. c. 110, the words "debts growing due" mean debts ascertained and payable in futuro. *Skelton v. Mott*, 5 Exch. R. 231.

#### DISCHARGE.

1. *What debts discharged.*—*Costs of action pending, the verdict being obtained on day of discharge.*—The adjudication of the Commissioner under the Insolvent Debtors' Act, 1 & 2 Vict. c. 110, s. 90, discharges the insolvent from all debts due or growing due at the time of the petition, to creditors, or to persons claiming to be creditors.

An insolvent inserted in his schedule the name of A., in whose hands he had placed two bills of exchange for the purpose of their being discounted. After the schedule was filed, he discovered that A. had indorsed the bills to B., and accordingly obtained leave to amend the schedule by inserting B.'s name therein, stating the circumstances under which the bills came to B.'s hands. B. sued the insolvent on the bills, and obtained a verdict at the assizes against him on the morning of



the day on which the order of adjudication was made, and proceeded thereon to judgment and execution: *Held*, that the insolvent was entitled to be discharged as to the action, both in respect of debt and costs,—although the costs were incurred after the filing of the petition. *Berry v. Irwin*, 8 C. B. 532.

2. *Excepted debts*.—By an order of adjudication by a Commissioner of the Insolvent Debtors' Court, purporting to be made pursuant to the 1 & 2 Vict. c. 110, ss. 76, 78, the prisoner was adjudged to be discharged as to all the debts in his schedule at the expiration of *six months* from the date of the vesting order, *except as to four debts*, which the Commissioner found to have been contracted by means of a breach of trust, and as to which the prisoner was ordered to be discharged at the expiration of *16 months* from the date of the vesting order: *Held*, that, whether the Commissioner had or had not jurisdiction to make the latter part of the order, the first part was no discharge as to the four excepted debts. *Esparte Violet*, 10 C. B. 891.

#### ENTRY OF SUGGESTION.

*Proof by plaintiff for costs in action, under fiat against defendant*.—The plaintiff obtained a verdict and judgment for 500*l.* damages, and 135*l.* 6*s.* costs: the defendant afterwards became bankrupt, and the plaintiff proved under the fiat for the costs only. The Court refused to enter a suggestion of the proof upon the roll,—there being no precedent, and in the opinion of the Court, no necessity for it. *Sainter v. Fergusson*, 8 C. B. 619.

#### EXAMINATION.

*Withdrawal of opposition to last examination.—Validity of security*.—A security given by a bankrupt to a creditor, on consideration of his forbearing to oppose the bankrupt's last examination, is not void under the 12 & 13 Vict. c. 106, s. 202. *Taylor v. Wilson*, 5 Exch. R. 251.

#### EXECUTION.

*On judgment signed under Judge's order, within protection of 1 Wm. 4, c. 7, s. 7*.—After declaration, in an action adversely brought, and without collusion, the defendant consented to a Judge's order for payment of debt and costs forthwith, the plaintiff to be at liberty, in case of default, to sign judgment and issue execution for the amount: *Held*, that a judgment signed thereon was a judgment by *nil dicit*, and within the protection of the 1 Wm. 4, c. 7, s. 7. *Bell v. Bidgood*, 8 C. B. 763.

#### FRAUDULENT COMPOSITION.

*Recovery of money paid as price of procuring*.—Whether a debtor paying money down to a creditor before he enters into a composition, as the price of procuring a fraud on his other creditors, may recover back the money,—*quære*. *Higgins v. Pitt*, 4 Exch. R. 312.

#### FRAUDULENT PREFERENCE.

The effect of bankruptcy upon a fraudulent preference, is not to put the goods in the same

situation, as if they were actually the goods of the bankrupt, so as to vest them at once, by the bankruptcy, in the assignees, independently of any election on their part, other than their acceptance of the office of assignee: but by a transfer which is a fraudulent preference, the property vests in the transferee, subject to be divested by the assignees, at their election, and the title of transferee is perfect, except so far as it is avoided by the assignees.

The commencement of an action of trover, which may be abandoned at any time, and which assumes that the goods came into the possession of the defendant lawfully, cannot, without more, be taken to be an election on the part of the assignees to avoid the transfer.

Where, therefore, goods had been transferred by a trader before his bankruptcy, by an instrument which the jury found to be fraudulent preference, and the transferee had, after the bankruptcy, and after the appointment of assignees, brought an action for an illegal and excessive distress upon the goods, which were the subject of the conveyance: *Held*, that the assignees having not otherwise asserted their right to the goods than by commencing an action of trover to recover them,—it was not competent to the defendants to set up their title under "not possessed." *Newnham v. Stevenson*, 10 C. B. 713.

#### ISSUING OF FIAT.

1. *Date*.—A fiat in bankruptcy, granted by the Lord Chancellor, was delivered by him to his Secretary of Bankrupts, to be transmitted by post to the Commissioners of Bankruptcy in the country. The secretary accordingly put the fiat into the post-office, in pursuance of the order given: *Held*, that the delivery of the fiat by the Lord Chancellor to the secretary was not the true "date and issuing of the fiat" within the 2 & 3 Vict. c. 29, so as to protect an execution levied after such delivery. *Freeman v. Whitaker*, 4 Exch. R. 834.

2. *Under 5 & 6 Vict. c. 122, s. 4*.—The 5 & 6 Vict. c. 122, s. 4, enacts, that fiats in bankruptcy shall be issued and transmitted by the Lord Chancellor's Secretary of Bankrupts, in such manner as the Lord Chancellor shall by any order direct. The Lord Chancellor, by an order, directed that every fiat directed to any district Court of Bankruptcy should forthwith be sent through the General Post-office to the deputy registrars of such district Court. A fiat in bankruptcy having been signed by the Lord Chancellor, and sent to the office of the Secretary of Bankrupts, was by him duly put into the post, and arrived at the district Court on the following day: *Held*, that the fiat issued at the moment it was put into the post. *Hernaman v. Coryton*, 5 Exch. R. 453.

#### JUDGE'S ORDER.

1. *Judgment by confession*.—A Judge's order, made by consent, for immediate judgment and execution, is a "judgment by confession" within the 108th section of the 6 Geo. 4, c. 16.

*Semble*, per *Rolfe*, B., that, under the 12 & Vict. c. 106, s. 133, execution upon such an order is only invalid where the order given is by way of fraudulent preference. *Andrews v. Diggs*, 4 Exch. R. 827.

2. *Judgment, when void, if not filed.*—The 137th section of the 12 & 13 Vict. c. 106, which declares that a Judge's order, made by consent, given by a trader defendant in any personal action, unless filed as thereby required, and the judgment and execution thereon, shall be "null and void to all intents and purposes whatsoever," does not avoid such order, &c., as against the trader himself, but only as against his assignees if he afterwards become bankrupt. *Bryan v. Child*, 5 Exch. R. 368.

#### LEASE.

*Proof of the supersedeas of the fiat.*—*Failure of consideration.*—By agreement between A. and B., reciting that B. had, as he was advised and believed,—legally and effectually put an end to a certain lease granted to C., and dated the 18th of July, 1839, of a certain farm, &c., by entry thereon under a power therein contained, by reason of the bankruptcy of C.; and that B. had agreed to grant a lease of the farm, &c., to A., for 21 years from the 29th of September, 1844, at the same rents, &c., as the same had been held by C.,—it was agreed that B. should grant and A. accept a lease, at a certain rent, payable quarterly,—the said lease to commence on the said 29th of September, 1844, if the defendant could then legally make and execute the same, or so soon after as the defendant should be in a situation to grant the same; that such lease should contain the same covenants, &c., as the lease to C.; and that A. should pay to B., on possession being delivered to him, 500*l.* as a premium for the lease so to be granted.

A. was let into possession, and occupied the farm for about two years, paying the rent; and he also, within that time, paid B. 250*l.* in part of the 500*l.* premium; but, the fiat against C. having been superseded, B. was unable to grant the lease to A.

A. thereupon brought an action for the breach of contract, alleging in his declaration, that he had always been ready and willing to accept a lease, that the 29th of September, 1844, and a reasonable time for B. to grant the lease, had elapsed, and that B. was in a situation to grant a lease. A. also sought to recover back the 250*l.* as money had and received, upon a failure of consideration:

*Held*, that the recital in the agreement, and proof of declarations made by B. that C.'s lease was void and good for nothing, were *prima facie* evidence, as against B., that he had power to grant the lease; but that, it appearing also by the recitals in the agreement, that the lease to C. was supposed to be void by reason of C.'s bankruptcy, such *prima facie* case was rebutted by proof of the supersedeas of the fiat against C.; and, consequently, that B. was entitled to the verdict upon an issue as to his ability to grant the lease.

*Held*, also, that the production of the supersedeas was sufficient proof of the issuing of the fiat against C., and of the fact of its having been superseded.

But, *held*, that A. was entitled to recover back the 250*l.*, as money paid upon a consideration which had failed. *Wright v. Colls*, 8 C. B. 150.

#### LETTER OF LICENCE.

*Covenant not to molest or interfere with debtor for given period.*—*Release.*—A., a trader, entered into an arrangement, by deed, with his creditors, by which it was agreed that he should have a letter of licence for five years, during which period he should carry on the trade under the inspection of certain persons therein named; and it was provided, that, if any creditor should, during the continuance of the licence, molest or interfere with A., contrary to the true intent and meaning of the indenture, A. should thenceforth be relieved, exonerated, acquitted, and discharged of and from all debts and demands of the creditor by whom the letter of licence should be so contravened, and that the said indenture should or might be pleaded in bar to such respective debts or demands accordingly.

*Held*, that the bringing of an action by a creditor, party to the deed, within the five years, was a "molestation or interference" with A., within the meaning of the proviso; and that the indenture operated as a discharge, and was pleadable in bar as such. *Gibbons v. Vouillon*, 8 C. B. 483.

Case cited in the judgment: *Ayliffe v. Scrimshire*, Carth. 63.

#### MESSENGERS' FEES.

*Express contract.*—The trade assignee of a petitioner under the Insolvent Debtors' Acts, 5 & 6 Vict. c. 116, s. 1, and 7 & 8 Vict. c. 96, s. 4, is not liable personally for the messengers' fees and expenses, in the absence of an express contract. *Hamber v. Hall*, 10 C. B. 780.

#### MESSENGERS' LIABILITY.

*Not within the protection of the 12 & 13 Vict. c. 106, s. 107, where he seizes goods of a third party.*—A messenger in bankruptcy, who, intending to act *bona fide*, under a warrant directing him to seize the goods of A., seizes goods belonging to B., is not within the protection of the 12 & 13 Vict. c. 106, s. 107, and therefore is liable in trespass at the suit of B., without a previous demand of the perusal and copy of the warrant under which he professed to be, and believed he was, acting. *Munday v. Stubbs*, 10 C. B. 432.

#### PRISONER.

*Custody of insolvent in Queen's Prison.*—*Removal to part appropriated to first class prisoners.*—A., a prisoner, in the Queen's Prison, in execution for the costs of a nonsuit, was, by an order of the Insolvent Debtors' Court made before the passing of the 11 & 12

*Vict. c. 7*, directed to file a schedule of his property, debts, &c., pursuant to the 36th section of the 1 & 2 *Vict. c. 110*. After the 11 & 12 *Vict. c. 7*, came into operation, the keeper of the prison, pursuant to the directions for the classification of prisoners under the 2nd section of that Act, removed *A.* to that part of the prison appropriated to first class prisoners: *Held*, that such removal was proper. *Stead v. Anderson*, 9 C. B. 262.

#### RE-EXAMINATION OF INSOLVENT.

Under *Stat. 1 & 2 Vict. c. 110, s. 98*, after the passing of *Stat. 10 & 11 Vict. c. 102*.—Motion by an assignee for a mandamus to the Insolvent Debtors' Court in London, to re-examine an insolvent under *Stat. 1 & 2 Vict. c. 110, s. 98*. The insolvency had taken place, and the petition, &c., had been exhibited, in 1839, more than 20 miles from London, and within the district subsequently assigned to the Somerset County Court; the original adjudication had been made by a Commissioner on circuit; and *Stat. 10 & 11 Vict. c. 102*, had since passed, which abolishes circuits, and, prospectively, gives jurisdiction to the County Courts in cases arising within their respective districts at the distance of more than 20 miles from London.

*Held*, that the Insolvent Debtors' Court in London was the proper jurisdiction. A rule nisi for a mandamus was granted, and no cause shown. *In re Willcox*, 13 Q. B. 666.

#### SURETY.

*Liability of insolvent surety for arrears of annuity accruing after his discharge under Stat. 7 & 8 Vict. c. 96*.—Under *Stat. 7 & 8 Vict. c. 96*, an insolvent surety for the grantor of an annuity is not protected by the final order from liability for arrears accruing after petition filed, and unpaid by the grantor. For the instalments of such annuity were not, before default, debts within the operation of the Statute. *Thompson v. Whatley*, 16 Q. B. 189.

Case cited in the judgment: *Thompson v. Thompson*, 2 New Ca. 168.

#### TROVER.

*Assignee of insolvent.—Evidence to impeach bill of sale.—Costs*.—In an action of trover for goods by the assignee of an insolvent, the plaintiff, in order to establish the insolvent's title to the goods in question at a certain time, gave in evidence a bill of sale, by which the insolvent, in consideration of the sum of 493*l.*, sold absolutely the goods to the defendant and other persons, and the plaintiff then produced evidence to impeach the validity of the bill of sale, by showing that it was wholly void on the ground of fraud. The plaintiff having obtained a verdict, *held*, that he was entitled to the costs incurred in the production of that evidence. *Hardy v. Tingey*, 5 Exch. R. 294.

#### VOLUNTARY PAYMENT.

*Money had and received*.—The defendant's wife, whilst sole, made, as surety with *F.*, a joint and several promissory note, payable to

*L. F.* having become embarrassed, delivered his effects to *W.* for the benefit of his creditors. The defendant applied to *F.* for money to take up the note, when *F.*, voluntarily, and in contemplation of bankruptcy, gave him an order upon *W.* for the amount, which was paid to the defendant. *L.*, in whose hands the note was, refused to receive the amount unless the whole of *F.*'s debt to him was paid, and the defendant retained it as an indemnity. A fiat in bankruptcy having issued against *F.*: *Held*, that his assignees were entitled to recover from the defendant the sum so paid to him, as money received for their use. *Groom v. Watts*, 4 Exch. R. 727.

### LAW OF LIBEL AND SLANDER.

#### CRIMINAL INFORMATION.

*Costs under 6 & 7 Vict. c. 96, s. 8*.—On a criminal information for libel, the defendant, if found Not Guilty, is entitled to costs under *Stat. 6 & 7 Vict. c. 96, s. 8*, though he has not pleaded the special plea allowed by sect. 6; and the Judge cannot deprive him of costs by a certificate, the provision of *Stat. 4 & 5 W. & M., c. 18, s. 2*, on this head being superseded by the later Act. *Regina v. Latimer*, 15 Q. B. 1,077.

#### INUENDO.

*When unnecessary*.—"Frozen snake".—In an action for writing and publishing of plaintiff, that her warmest friends, in giving up their advocacy of her claims, stated that they had realised the fable of the frozen snake, if Not Guilty be pleaded, and a verdict of Guilty found, the plaintiff is entitled to judgment, since the jury may have understood that the words "frozen snake" were meant to charge the plaintiff with ingratitude to friends. And it is no objection, in arrest of judgment, that the words are not explained by innuendo; for the Court will notice that the words are commonly enough understood in this sense to warrant a jury in so applying them. *Hoare v. Silverlock*, 12 Q. B. 624.

#### MASTER AND SERVANT.

*Presence of third person.—Malice, the question for the jury*.—If a master, about to dismiss his servant for dishonesty, calls in a friend to hear what passes, the presence of such third person does not take away privilege from words which the master then uses, imputing the dishonesty.

A master, having so dismissed his servant refused to give him a character, alleging to those who asked the character, that he had discharged him for dishonesty. The servant's brother afterwards inquired of the master why he had treated the servant so, and was keeping him out of a situation. The master said, "He has robbed me; and I believe for years past;" adding, that he concluded so from the circumstances under which he had discharged the servant. Only one instance of actual robbing had been imputed.

*Held*, that the answer did not go beyond the privilege afforded by the inquiry. And

*Held*, that, on trial of an action for speaking words, as above stated, in presence of a third person, and in answer to inquiries by the brother, no further proof being offered by the plaintiff to show malice, the Judge ought not to have left the question of malice to the jury. *Taylor v. Hawkins*, 16 Q. B. 308.

Cases cited in the judgment: *Toogood v. Spyring*, 1 Cro. M. & R. 181; 4 Tyr. 582; *Wright v. Woodgate*, 2 Cro. M. & R. 573; *Tyr. & G.* 12.

#### PRIVILEGED COMMUNICATION.

1. *Where defendant invites the inquiry.*—Case for slanderous words. Plea, Not Guilty. Plaintiff, a domestic servant, about to enter the service of B., referred B., for her character to defendant, in whose service plaintiff had been. Defendant being then unwell, her husband answered the application, and gave plaintiff a good character; and B. took plaintiff into service. Defendant recovered, and, in a letter written to B. on other matters, said that she, defendant, had lately been much imposed upon in her kitchen. B., in consequence, made further inquiries of defendant as to plaintiff's character; and defendant, in answer, spoke the words she complained of, viz., that she suspected plaintiff of dishonesty.

The jury, in answer to the Judge, found that defendant intended by her letter to induce inquiries on B.'s part as to plaintiff; and they found a verdict for plaintiff, subject to leave to move for a nonsuit. On motion to enter a nonsuit,

*Held*, that the defendant was bound to correct any error, as to plaintiff's character, into which she supposed B. to have been led by the answer to B.'s former application; and that the words were spoken under such circumstances as *prima facie* to be privileged. *Held*, also, that the facts that defendant alluded to plaintiff, and induced inquiries about her, were not evidence of malice. Rule absolute for a nonsuit. *Gardner v. Slade*, 13 Q. B. 796.

2. In an action of slander, if the facts proved are such that the communication is, by the rules of law, privileged, the Judge ought not to leave any question to the jury as to malice, unless the plaintiff gives further evidence showing a probability that the communication was made maliciously rather than that it was made *bona fide*. *Taylor v. Hawkins*, 16 Q. B. 308.

3. *Words spoken bona fide in pursuance of a duty, or to protect the interests of the speaker.*—In slander or libel, the term "privileged communication" comprehends all cases of communications made *bona fide*, in pursuance of a duty, or with a fair and reasonable purpose of protecting the interest of the party uttering the defamatory matter.

Therefore, where the defendant had dismissed the plaintiff from his service on suspicion of theft, and, upon the latter coming to his counting-house for his wages, called in two

other of his servants, and, addressing them in the presence of the plaintiff, said,—"I have dismissed that man for robbing me: do not speak to him any more, in public or in private, or I shall think you as bad as him:" *Held*, a privileged communication; for, that it was the duty of the defendant, and also his interest, to prevent his servants from associating with a person of such a character as the words imputed to the plaintiff, inasmuch as such association might reasonably be apprehended to be likely to be followed by injurious consequences, both to the servants and to the defendant himself.

To entitle the plaintiff in such a case to have the question of malice left to the jury, it is not enough that the facts proved are *consistent* with the presence of malice as well as with its absence; for, in cases of privileged communications malice must be proved, and therefore its absence must be presumed until such proof is given. *Somerville v. Hawkins*, 10 C. B. 583.

#### PUBLICATION TO AGENT.

*Estimate of damages.*—The first count, in an action for a libel, was in respect of a newspaper published more than 17 years before action brought. The Statute of Limitations being pleaded, *held*, that the plea was negatived by proof that a single copy had been purchased from defendant for plaintiff, by plaintiff's agent, within the six years.

Other counts were in respect of other libels, alleged to impute to plaintiff the libellous matter charged in the first count, which was set out by way of inducement in each count. The libels themselves, in these other counts, did not refer to that in the first count. The Statute of Limitations was pleaded to so much of these counts as related to the matter in the first count: *Held*, that the plea was negatived as to these counts also; and, further, that it was not necessary to tell the jury, in estimating the damages as to such matter, to take into consideration the fact that the only publication proved had been the sale to the agent. *Duke of Brunswick v. Harmer*, 14 Q. B. 185.

#### REPORTS OF PROCEEDINGS IN COURTS OF JUSTICE.

*What put in issue by "not guilty."*—It is a good defence to an action for a libel, that it consists of a fair and impartial (though not verbatim) report of a trial in a court of justice; and such defence is admissible under not guilty, which puts in issue as well the lawfulness of the occasion of the publication, as the tendency of the alleged libel. *Hoare v. Silverlock*, 9 C. B. 20.

Cases cited in the judgment: *Cotton v. Browne*, 3 A. & E. 312; 4 N. & M. 831.

#### SENTENCE OF IMPRISONMENT.

1. *What words amount to.*—*Form of judgment by retraxit.*—*Several counts of indictment.*—*Amending record after error brought.*—Indictment for libel stated that defendant, intending to defame B., published a libel containing divers false and scandalous matters of

and concerning the said B., that is to say: No lady would admit to her society such a crack-brained scamp as B. (meaning the said B.): *Held*, by the Exchequer Chamber on error, that these averments showed sufficiently, without more formal introduction, that the libel was of and concerning B.

The following words were held by the same Court, on error, sufficient to maintain an indictment for libel: Why should T. be surprised at anything Mrs. W. does? if she chooses to entertain B., she does what very few will do; and she is of course at liberty to follow the bent of her own inclining, by inviting all the expatriated foreigners who crowd our streets to her table, if she thinks fit.

On indictment for libel, the defendant suffered judgment by retraxit. The record of the judgment stated that the prosecutor and defendant came, &c., and defendant "withdrew his plea by him above pleaded in manner and form aforesaid," "whereby our said Lady the Queen remaineth against him without defence in this behalf. Whereupon" it was adjudged that he be convicted, &c.: *Held*, by the Exchequer Chamber, on error, sufficient ground for a judgment, though it was not expressly alleged that the defendant confessed the indictment.

The judgment, as entered on the record, being that, for the offences charged upon him in each and every count of the indictment, the defendant be imprisoned in the Queen's Prison for six months now next ensuing: *Semble*, by the Court of Exchequer Chamber, on error, that the judgment was, in form, a sentence of one term of six months' imprisonment upon the whole indictment, and would therefore be erroneous if any count was bad.

To the judgment of imprisonment as above, was added: "And that he" (defendant) "be placed in the first division of the fourth class of prisoners in the Queen's Prison:" *Semble*, by the Court of Exchequer Chamber, on error, that, if this direction was not warranted by an order of the Secretary of State under Stat. 5 & 6 Vict. c. 22, it still did not vitiate the judgment. And *held* by the Court of Queen's Bench, that such direction, when warranted, is no part of the judgment of the Court, but a mere order.

After error brought, and when the case was in the paper for argument, the Court below permitted the prosecutor (defendant in error) to amend the record as to the venire and continuances. The writ of error was then argued. Before judgment in the Exchequer Chamber, the Court below, on motion, permitted the prosecutor, on payment of costs, to amend the record again by the rule of sentence, as entered in the Master's book, for the purpose of removing the objection that one term of imprisonment appeared to be awarded for all the offences. Afterwards, the case again standing for argument in error, the Court below, on motion, permitted the prosecutor, on payment of costs, to amend again (there being sufficient materials), for the purpose of more completely

removing the same objection; and they permitted him, at the same time, in the entry of the retraxit, to substitute a direct averment that the defendant below "*withdrew*" his plea, whereby our Lady the Queen remaineth, &c., for an averment that, the defendant "*having withdrawn*," &c., our Lady the Queen remaineth, &c.

Although each motion was opposed, and all the objections met by the amendments were raised by the original assignment of errors. *Gregory v. Reginam*, 15 Q. B. 957.

Case cited: O'Connell v. Reginam, 11 Cl. & F. 155.

2. *Imprisonment on several counts of indictment*.—Judgment was given that on each of four counts of an information the defendant be imprisoned; on the first count, "for the space of two months now next ensuing;" on the 2nd count, "for the further space of two months, to be computed from and after the end and expiration of his imprisonment" for the offence mentioned in the 1st count; on the 3rd count, for the further space of two months, to be computed in like manner from the end of the imprisonment on the 2nd count; and on the 4th count, for the further space of two months, to be computed in like manner from the end of the imprisonment on the 3rd count. The 3rd count was adjudged on error to be insufficient. *Held*, that the sentence on the 4th count was not thereby invalidated, and that the imprisonment on it was to be computed from the end of the imprisonment on the 2nd count. *Gregory v. Reginam*, 15 Q. B. 974.

#### SPECIAL DAMAGE.

1. *Put in issue by not guilty*.—In case for words not actionable *per se*, averring special damage, "not guilty," puts in issue not only the speaking of the words, but also the special damage alleged.—*Wilby v. Elston*, 8 C. B. 142.

2. *Words charging prostitution or swindling not actionable*.—The words, "You are living by imposture: you used to walk St. Paul's Churchyard for a living;"—spoken of a woman with the intention of imputing that she was a swindler and a prostitute,—are not actionable, without special damage.—*Wilby v. Elston*, 8 C. B. 142.

Case cited in the judgment: Norton v. Scholfield, 8 C. B. 149.

3. *Malice*.—In an action for slander of title by saying at the sale of a lease and assignment of premises, whereof the defendant was the original lessor, the false and malicious words, viz., "that the whole of the covenants of this lease are broken, and I have served notice of ejectment; the premises will cost 70l. to put them in repair;" by reason of which false and malicious words the property fetched less than it otherwise would have done; the true question for the jury is, whether the words are false and malicious, and whether the special damage arose therefrom. *Brook v. Row*, 4 Exch. R. 521.

# The Legal Observer,

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## PROSPECTS OF LAW AMENDMENT.

### BILLS BEFORE PARLIAMENT.

THE most enthusiastic Law Reformers must now be satisfied that there is a sincere desire on the part of those in and out of power, to amend our legal institutions. Energy, ability, and experience, are combined with parliamentary influence and personal authority, and by general consent the question of Law Reform is regarded as a species of neutral ground, and dissociated from the struggles of party.

Although much has been done, it seems to be universally conceded, that much more remains to be done. The regular parliamentary session has opened under circumstances peculiarly auspicious, and it is earnestly to be hoped that the spirit of candour, moderation, and concession, which prevailed the discussions that have taken place in both Houses on legal topics, may be sustained in unabated vigour during the debates which are to be anticipated.

Lord St. Leonards lost no time in redeeming the promise made by him at the commencement of the Session, by introducing on the first day after Parliament re-assembled no less than six bills, all of which had been previously announced. One of Lord St. Leonards' bills is for "the further relief of *Suitors in Chancery*," a second relates to the administration of the Law of *Bankruptcy*, three others refer to *Lunatics*, and the last, which is described as a *Criminal Law Amendment Bill*, is in fact the commencement of a Criminal Code, containing a Digest of the Law upon Offences against the person, together with a preliminary chapter relating to all offences. Lord St. Leonards' Bills were respectively read a first time, and the second readings were fixed for the 24th instant. The first and

last of the bills, however, called forth some observations from the Lord Chancellor and Lord Campbell, not undeserving of notice. In reference to the Bill for the further relief of *Suitors in Equity*, by diminishing the expenses consequent upon the administration of property by the Court of Chancery, the Lord Chancellor, whilst expressing his unqualified approval of the principle of the measure, reminded their Lordships, that its value depended altogether upon matters of detail, which he had not sufficient time to master, and, therefore, reserved to himself the right of forming and stating his opinion hereafter. The Bill, his Lordship observed, was to be regarded as a financial no less than a legal measure, as it proposed to deal with 40 millions of money. These observations of the Chancellor indicate that his Lordship entertains a just sense of the responsibility which devolves upon the individual placed at the head of the law, to form his own judgment upon every legal measure of importance submitted to Parliament.

With regard to the "*Criminal Law Amendment Bill*," Lord Campbell offered a suggestion, which did not meet with the approval of the noble and learned Lord by whom the Bill was introduced, and we venture to think, will not meet with general concurrence. As already intimated, the Bill is the first instalment of a Criminal Code or Digest, and the Lord Chief Justice thought it expedient to introduce a clause which would prevent this Bill from coming into operation until the whole code was complete. The arrangement now proposed by Lord St. Leonards to codify one branch of the criminal law, and make it the subject of a separate Act, is that suggested by the Criminal Law Commissioners, — approved by Lords Lyndhurst and Brougham, and it has the obvious advantage of trying

an important experiment upon a scale sufficiently extensive to afford an adequate test of its merits, without the possibility of any serious interference with the course of criminal justice. A return of the time and labour bestowed in preparing the Bill now submitted to Parliament, would prove, that if the experiment is to be postponed until the whole body of the Criminal Law has been codified after the same fashion, the subject would cease to afford any practical interest to the race of living lawyers.

The Lord Chancellor, following the example of Lord St. Leonards, availed himself of an early opportunity of announcing the legal measures the Government were prepared to introduce in the course of the present Session. The advantages of this course of proceeding are so apparent, the only wonder is, that it had not long since become established as the practice of Parliament.

Lord Cranworth's statement was lengthened, able, and elaborate. It would seem, however, from the comments of the daily journals, that it has produced disappointment, precisely in the proportion and upon the grounds that we conceive ought to afford the greatest satisfaction. The Lord Chancellor feels, what must strike every calm and philosophical mind, that the danger is not now that Law Reform should stop, or proceed too slowly, but that it may march too rapidly. "I feel," said his Lordship, "that there may now possibly be a danger, the opposite of that into which I think those who held the Great Seal half a century ago were too apt to fall—a danger lest from the great and proper feeling that the law required reforming, a disposition to mere change should arise, and measures be introduced for the mere sake of introducing them—a danger lest the holder of the Great Seal should fall into a course like that sometimes practised by inferior medical practitioners, who would prescribe physic for the patient when the circumstances were such that to have left him alone would possibly have been best." His Lordship's estimate of the responsibility which now attaches to the individual intrusted with the Great Seal, was also happily and correctly expressed. "No one filling the office I have now the honour to fill," said Lord Cranworth, "can fail to feel that to him the country looks, if not for the introduction of measures of Law Reform, at least for the general supervision of the whole of our legal system. It is in such a position where the introduction of new measures was necessary, to make sure that the measure proposed appeared

to be ill-conceived, and, in short, to exercise a general control over the legal condition of the country, in order to keep it in the most satisfactory state which the order of things will allow." His Lordship paid a just tribute of respect to Lord Truro for his judicious labours in the amendment of the Law, and, after stating that he did not propose to interfere with the new system of procedure, so recently established in the Superior Courts of Common Law, and in the Court of Chancery, and that he had not conclusively made up his mind upon many other questions of great importance, to which his attention had been directed, during the seven weeks in which he held office, prefaced his announcement of the measures about to be introduced, by an observation worthy of all praise, as it affords the country the fullest assurance that the individual placed at the head of the Law, does not fear the imputation that he proposes nothing, whilst he has no measure prepared that his judgment and his conscience enabled him to recommend as beneficial. His Lordship, however, thought the Bill for the *Registration of Deeds*, which he found made to his hand, and which passed the House of Lords in the Session 1851, a most beneficial measure, and he concluded by introducing it.<sup>1</sup> He also announced that a Bill was in preparation, but not yet matured, for the *better regulation of Charities*; and that a plan had been under consideration, by which, with the assistance of Mr. Bellenden Ker, and two or three other gentlemen not named, he hoped to be able to effect what had been long desired, a *classification and consolidation of the whole of the Statute Law*.

Lord St. Leonards expressed his regret, that the Bill for the *Registration of Deeds* had been introduced by Government, as he would be prepared to show at the proper time, that the damage it would produce would exceed its benefits, and he doubted if the landed gentry would be willing to incur a vast expense for a very problematical benefit. As to the proposed consolidation of the Statutes, he warned Lord Cranworth that he was embarking upon a measure of itself sufficient to occupy a long life, and that no man could alter the phraseology of the Statutes and digest them in such a manner as not to lead to great litigation.

Lord Campbell, whilst generally approving of the Lord Chancellor's state-

<sup>1</sup> See the article on this subject, p. 313, *post*.

ment, expressed himself nearly in as decided terms, against the *confusion* of Law and Equity, as Lord St. Leonards had previously done. At the same time, he assented to the principle, that each tribunal should be invested with powers to decide finally every controversy which came before it. As to the Registration of Deeds, he admitted that it would not in the first instance lessen the expense of the transfer of land, but after a plan of registration had been in operation for a few years, there would be an end to the uncertainty and expense of ascertaining whether a vendor possessed the interest in an estate which he professed to sell.

The debate on Monday night, arising out of the Lord Chancellor's statement, was confined to the three noble and learned Lords above referred to. The observations which fell from them are pregnant with importance, and afford materials for consideration and comment, of which we shall necessarily avail ourselves, and on which we need not invite our readers to ponder.

#### RELATION BETWEEN THE BAR AND ATTORNEYS.

We were gratified to find in the last number of the *Law Review*, what we presume we may consider as an authoritative announcement that the Law Amendment Society disclaimed all consent or concurrence with those members of the Junior Bar, who sought to make the repeal of the 9 & 10 Vict. c. 95, s. 91, a pretext for abandoning the established usage of the profession, and uniting in their own persons the separate functions of barrister and attorney.

Those who were correctly informed as to what was contemplated and professed by a small section of the Junior Bar, could not doubt that the very equivocal terms in which the subject was referred to in the last annual report of the Law Amendment Society, would operate as an encouragement, and be considered as a sanction by gentlemen fancying that their ill success was the result of professional restraint, and anxious to trample under foot all the trammels of etiquette. As already noticed in these pages,<sup>1</sup> the Law Amendment Society not only adopted a general resolution:—"That any practice which has a tendency to prevent the public from obtaining the assistance of counsel, except through the

intervention of an attorney, should be discontinued;" but the report of the society suggested, that it was for the Bar to consider whether it would act on this resolution, "which," says the report, "it has power to do, if it should see fit, and should the occasion require it." The "occasion" thus dimly hinted at was soon supposed to be discovered. Some half dozen members of the Junior Bar, personally we understand altogether unexceptionable, but who had no more authority to represent the Bar generally upon this occasion than the three tailors of Tooley Street to represent the people of England, took upon themselves the initiative. They have had few clients, we believe, and no followers. The "movement" has stopped just where it began, and exposed those who acted upon such vague teaching, not only to mortification and disappointment, but to public rebuke. The matter was expressly referred to by Lord St. Leonards in his statement from the Woolsack at the commencement of the Session, when he took the opportunity of observing, that "the practice of barristers acting without the intervention of solicitors was, in his eyes, highly objectionable, and one he should be the last person to countenance." Commenting upon this remark of the late Chancellor, the writer in the *Law Review* (page 428) adds, "We content ourselves with saying we were no parties to the late movement of certain barristers to which he (Lord St. Leonards) alludes, and we do not approve of the manner in which it was made, which we need not say had not in any way the sanction of the Law Amendment Society." Thus unequivocally condemned by the authority and experience of Lord St. Leonards, and neither approved of nor supported by the Law Amendment Society, we suppose we may conclude that the movement, which it would now be ungenerous to refer to either with ridicule or asperity, has been abandoned: and we trust that nothing may occur to prevent the restoration of that harmony and cordiality which it is so desirable should exist uninterruptedly between both branches of the Profession.

The *Law Review*, in the article above referred to on Lord St. Leonards' Speech in the House of Lords, on the 16th of Nov., in reference to the subject of Advocacy in the Courts of Bankruptcy and the County Courts, makes some extracts from Lord St. Leonards' speech, accompanied by some observations of the Learned Reviewer,



which we deem it proper to lay before our readers. They are as follow :—

“ The Lord Chancellor then went on to another subject as follows :—

“ ‘ Solicitors are now permitted to appear as advocates before the Commissioners. I propose to put the same restriction as is now put upon attorneys under the County Courts Act. That is, my Lords, I object to the existence of the class called attorney-advocates. I do not object to a man’s attorney arguing his case for him, but I do object to an attorney being turned into a barrister, and acting as an advocate. There is no fair play in that. I desire to see the Profession stand upon its proper basis. I wish the barrister not to trench upon the province of the attorney, nor the attorney upon the province of the barrister. Let each stand in his own place. Depend upon it, my Lords, if the system which has so long prevailed be broken in upon, great evils will ensue. It will necessarily lower the character of the Bar. Whether it will elevate the character of attorneys, I will not stay to determine ; but, at any rate, there must be equality.’ ( P. 28.)

“ And then his Lordship thus alluded to another point :—

“ ‘ Your Lordships had, in the course of last Session, to decide whether you would continue the restriction upon counsel from acting in the County Courts without attorneys, or whether you would leave the etiquette of the Profession and the honour of the Bar to maintain things as they have hitherto existed. It so happened that the decision of that question, if I may say so, devolved upon myself. My noble and learned friends were divided in opinion, two and two, and as the matter was left by the House to the decision of the Law Lords, it necessarily fell to the fifth to give the casting vote, if I may call it so, upon the question. I did give that vote with great reluctance in favour of repealing the law which prohibited counsel from acting without attorneys ; but, while I did so, I took care expressly to state, that I gave that vote upon the distinct statement that *attorneys had threatened the Bar* that if they took business in the County Courts, they should not have business elsewhere. I meant to leave it, therefore, to the honour of the Bar to act as they had always acted, not intending to open the door at all, unless there be an absolute necessity for it, to the practice of barristers acting without the intervention of attorneys—a practice, in my view, highly objectionable, and one which I should be the last person to countenance. Certain barristers, however, I regret to hear, have since then taken upon themselves to decide that they will thus act without attorneys. That is a course of proceeding, my Lords, which cannot be too highly reprobated. I am far from saying that, in the present state of the law, the Bar, as a body, may not properly meet and consider what it becomes them in their station to do.

But if any such serious change in the long-established usage of the Bar is to be made, it ought at any rate to be made with the concurrence of a *large majority* ; and I entirely object to any small number, or even to any considerable number, taking upon themselves to act contrary to the general rule of the Profession, now so long established.’ ( P. 28, 29.)

The Reviewer adds,—

“ We think it right to give these opinions of the late Lord Chancellor as deserving great attention ; and we shall content ourselves with saying that we were no parties to the late movement of certain barristers to which he alludes, nor do we approve of the manner in which it was made, which we need not say had not in any way the sanction of the Law Amendment Society. Without expressing our concurrence with the opinion of Lord St. Leonards on these points, we will add his concluding warning as to this, in which we do fully concur :—

“ ‘ My Lords, the Bar at the present moment is in a state of transition, and I would recommend everybody having any voice or any influence in this matter to consider this point, not to mention any other, where—if you allow the Bar to lower its own station or dignity—you are to look for learned persons to occupy your benches and carry on the administration of justice.’ ( P. 29, 30.)

And the learned writer thus concludes :—

“ A step of the kind alluded to should have been taken with some deliberation, and, at all events, on full notice to all persons who had entertained the matter, which, we apprehend, was not attempted to be given. We are thus forced to allude to this subject, and expressly reserve all our opinions previously expressed on this subject, under the belief that the time will come when they can and will be acted on efficiently and usefully, as well to the Profession as the public, and this, perhaps, sooner than some of our readers may suppose. It is in dealings with property that the way lies open for a change which might lead to the most successful results.”

This remark evidently points to the contemplation of some conveyancing counsel, who are disposed to act without the intervention of solicitors, and we would warn those gentlemen from making an attempt which cannot succeed and will probably injure themselves.

## CHANCERY SUITORS' FURTHER RELIEF BILL.

THE Bill introduced by Lord St. Leonards, on the 10th February, comprises the following clauses:—

The Lord Chancellor may, where the object can be effected by transfers or entries in the books and accounts, direct that instead of an actual sale or purchase of stock the same may be considered as effected according to the Stock List of the day at the Bank of England; s. 1.

A "Stock Exchange Account" to be kept by the Accountant-General, for the purpose of recording all such transactions; s. 2.

No brokerage to be charged, except where sales or purchases are actually effected. Power to Lord Chancellor to order payment of 1-16th per cent., in respect of every transaction heretofore chargeable with brokerage, to the Suitors' Fee Fund; s. 3.

An annual account to be kept of all moneys remaining uninvested for two years; same to be then considered as invested in Three per Cent., unless notice not to invest same from some competent party; s. 4.

Funds, the dividends of which have not been received for 15 years, may be transferred to the Suitors' Fee Fund Account; s. 5.

Rights of suitors to stock or dividends transferred not to be affected, but to be satisfied out of the Suitors' Fee Fund; and when necessary for such purposes, the Lord Chancellor may impose fees in relation to proceedings and direct their collection by means of stamps, and alter, diminish, or abolish such new fees; s. 6.

At expiration of every five years, investigations and transfers to be made of accounts the dividends of which have not been received for 15 years; s. 7.

Dividends, &c., arisen and to arise from the moneys placed out to provide for Chancery officers, to be transferred to Suitors' Fee Fund; s. 8.

If at any time it shall appear to the Lord Chancellor that the fees on proceedings shall be sufficient to answer the charges for the time being on the Suitors' Fee Fund, and that the fees payable by suitors shall already have been reduced as far as may be deemed expedient in the due administration of Justice, it shall be lawful for him by order to direct that any part, not required for the purposes aforesaid, of the dividends shall be applied in payment of the salaries of the Judges of the said Court, or any of them, in relief of the Consolidated Fund charged therewith by the 15 & 16 Vict. c. 87, s. 16, and such salaries shall thereupon cease to be payable out of the Consolidated Fund; s. 9.\*

In lieu of brokerage on any transfer of Stock for identifying transferor, a sum not exceeding one guinea, whatever may be the amount transferred; s. 10.

Stamp duties now payable on powers of at-

torney for sums not exceeding 20*l.*, or dividends above 3*l.* and not exceeding 5*l.*, repealed, and in lieu thereof a stamp of 5*s.* on the vellum, &c.; s. 11.

Such duties to be under the management of Commissioners of Inland Revenue; s. 12.

Lord Chancellor may direct the Accountant-General to act on powers of attorney in receipt of further moneys becoming payable; s. 13.

Compensation allowances to officers may be applied in making good moneys improperly withheld or abstracted by parties entitled to such allowances, with interest and costs,—such order to overreach any assignment made after 10th February, 1853, of the same, whether voluntary or not; s. 14.

Payments may be made out of the funds in the bank for work done and for expenses of carrying this Act into effect; s. 15.

Orders made under this Act may be annulled, altered, or renewed; s. 16.

"Lord Chancellor" to include "Lord Keeper" or "Lords Commissioners of Great Seal" for time being; s. 17.

\* This clause is a departure from the principle recently established by the Legislature, of relieving the suitors from the salaries of the Judges, which ought to be paid by the State. Such a return to a vicious system will, of course, be energetically opposed.

## SIMPLIFYING TITLES AND FACILITATING TRANSFERS OF LAND.

WE deem it useful to record the change of opinion which has taken place amongst public writers on the subject of the Registration of Deeds. Almost the whole of the Press was not long ago in favour of a registration of every deed, instrument, or document relating to real property, which they supposed would diminish the expense and facilitate the conveyance of estates. "A change appears to have come over the spirit of their dream." A general register is now admitted to be dangerous, if not impracticable.

In our Number for the 4th September last, we laid before our readers the plan suggested by Mr. W. Strickland Cookson, an eminent solicitor, which appears to have had a remarkable effect upon the speculations of the Law Reformers on this subject. That plan is as follows:—

1st. That the Law should be so altered as to vest *the whole legal estate* in one or more persons, either the real owners, or trustees for them. *These deeds to be registered to render them valid.*

2nd. That where the estate is so vested in trust, declarations of trust may be made

to entail the estates—to provide jointures, portions for younger children, and to secure mortgagees, annuitants, devisees, &c. *These deeds need not be registered.*

3rd. But *caveats* (as in the case of *distringas* on stock) may be entered, so as to secure the *cestui que trust*, annuitant, mortgagee, &c., from any improper dealing with the property.

It has been long observed that one of the merits of *The Times* newspaper is that of an early ascertainment of public opinion. We therefore think it expedient to extract the following leading article in that journal of Friday, the 11th instant:—

“Probably, of all subjects connected with law reform, there is none so important in itself, and so eagerly desired by the nation, as the *simplification of the titles and facilitation of the transfer of land*. It is felt that by such a measure the value of real property would be raised, and that not merely litigant parties, but every one possessed of an interest in the soil, would profit largely by the change. It is, therefore, with much regret that we hear it reported that it is the intention of Government to introduce a measure for the registration of deeds and assurances, instead of directing their attention to the means of effecting more readily a transfer of the ownership in land.

“There was, indeed, a time when the registration of deeds would have been considered a great advance towards a reform of the Law of Real Property. The assumption on which that idea rested was, that our feudal and intricate system of titles was in itself good and wise, and only required greater notoriety and publicity. An exaggerated idea was entertained of the evil of secret conveyances, and a fear of the effects of constructive notice. It was also felt, very truly, that under the present system no lawyer has the full evidence of title before him when he decides, and can only give his opinion, subject to the production of deeds not disclosed on the abstract. We may readily concede, that had the Law of Real Property been in itself really sound and rational, a registration of deeds, fixing every purchaser with actual notice of their contents, would have brought it some steps nearer to perfection.

“But of late years mankind have left off considering the Law of England as the perfecting of reason, and have begun to doubt whether, by more completely carrying out its principles and tendencies, they are not aggravating a great evil, instead of promoting a great good. The registration of deeds has been ably combated by Lord St. Leonards with reasons of great weight and force, and it has come to be admitted by most men that cheapness is not among the advantages to be expected from the introduction of this elaborate and costly expedient. The belief is more and more gaining ground that the principle of our Law of Real Property is radically and essentially faulty.

That principle has been to fetter the land by saddling its title with every contract relating to its possession. If a man conveyed land to another in trust for a third party, the reasonable construction of the contract would seem to be, that the trustee should be the owner of the land, and that the right of the person for whose benefit it was conveyed should be a mere personal confidence, not binding on the land at all. The Law of England, however, determined otherwise. It held that by this transaction two estates in the land were created, and that no title would be good which did not thoroughly trace out and unite them both. The object of this doctrine was the praiseworthy wish to carry out the original intention of the parties. Its unforeseen effect was to render the titles to land a mass of complexities and absurdities. The land became, so to speak, the tablet on which any owner could write whatever he pleased, and the caprice, the vanity, or the prodigality of one person is thus perpetuated in baneful inheritance to future generations. People have begun to feel that, had these same principles been applied to stock, had every person in whose name a hundred pounds of the public debt stood in the books of the Bank of England been compelled to show, not merely his ownership, but all the interests, several and successive, of the persons for whom he is trustee, the title to stock would be at this moment as intricate as the title to land, and the conveyance as expensive. If we are to have cheap conveyances and simple titles, this can only be done in one of two ways,—either by reducing the different forms of ownership to a fee simple, and thus curtailing the dominion which Englishmen have been for ages in the habit of exercising over their property, or, if we are not prepared for such a sacrifice, by disconnecting these lesser interests from the land, and recognising, for the purpose of conveyance, nothing short of the most complete ownership. Complicated titles cannot co-exist with short and cheap conveyances, and it was mainly because it tends to perpetuate and stereotype these complexities that public opinion runs so strongly counter to a registration of deeds. We do not want to know the history of our neighbour's land for the last 100 years, and to be fixed with notice of every transaction affecting it. What we want is to be dispensed from the necessity of such knowledge, and to be referred by the law to persons with whom we may safely deal without entering into any such perilous investigation. This desideratum has been effected in stock and in manors where the rolls have been carefully kept, and there is no reason in the nature of things why the same facility of transfer and dispensation from the investigation of title should not be extended to freehold land.

“It is impossible to exaggerate the advantages of such an achievement, if successful. Instead of introducing, as the registration of deeds would do, an additional element of uncertainty in the fatal effects of an oversight in the search, it would render that oversight im-

possible by rendering the search unnecessary. A registration of deeds would not shorten a conveyance by a single line. A measure such as we propose would do away with conveyances altogether, nothing being required but the name of the vendor or purchaser, and the description of the land. A registration of deeds would be opposed by most zealous Law Reformers, and the Solicitors, who have so often succeeded in procuring its rejection, would be strengthened by the support of those most competent to give an opinion on this abstruse and difficult subject. Twenty years ago, a registration of deeds would have been hailed as a step in advance. So rapid has been the progress of opinion during that time, that it would now be regarded as an actual retrogression. A measure for the registration of deeds would combine against it the biggoted opponents of all change—the economist, who would be repelled by the prospect of its expense—and the scientific inquirer, who regards it with distrust as introducing a new element of danger, and wasting in one direction labour which might be better bestowed in another. We trust, therefore, that Lord Cranworth will pause before he involves the Government in a measure which will require all their strength to carry; the heavy expense of which is certain, and its expediency more than doubtful.”

#### ADDRESS TO MASTER FARRER,

ON HIS RETIREMENT AS SENIOR MASTER  
OF THE COURT OF CHANCERY.

ON Monday, the 7th instant, a deputation of solicitors waited upon J. W. Farrer, Esq., the Senior Master of the Court of Chancery, at his Chambers in Southampton Buildings, to present him with an Address upon his retirement from office, pursuant to the provisions of the Office of Masters in Chancery Abolition Act.

Mr. Sudlow, of the Firm of Sudlows, Torr, and Janeway, presented the Address, accompanied by Mr. W. H. Palmer, Mr. E. W. Field, Mr. C. N. Wilde, Mr. Bridges, Mr. Tilson, Mr. W. H. Woodhouse, Mr. Armstrong, Mr. Goodford, Mr. Trinder, Mr. Kennedy, Mr. J. H. Turner, Mr. Devey, Mr. Fox, and a numerous body of other solicitors, with Mr. Maugham, the Secretary of the Incorporated Law Society.

The Master was attended by his brother, the eminent solicitor, and by two of his sons, and Mr. Whiting, his late Chief Clerk.

Mr. Sudlow, in presenting the address, said, “That on this occasion he felt himself honoured in being deputed to express, however, imperfectly, the feelings of respect and gratitude entertained for the Master, not only

by himself and the other solicitors who had concurred in the Address, but, he might add, by the Profession at large. The gentleman (Master Farrer) whom he had the honour of addressing, had received his appointment from Lord Chancellor Eldon so long ago as the year 1824, and had risen to be the senior Master; that during the long interval from that period to the present time, he had invariably discharged the functions of his important office with unblemished integrity, the clearest intelligence, and the most exact punctuality; that his earnest desire to administer justice was exhibited in the pains taken to investigate every case brought before him in all its details,—by unwearied patience in listening to the statements and arguments which were adduced on all sides, and the caution with which his judgments were formed and delivered. He need not enlarge on the labours encountered by the Master in the transaction of the vast amount of business which had fallen to his share, especially in the hearing of the numerous solicitors present, who had themselves witnessed those exertions; but he could not help referring to the printed returns of the Suitors’ Fee Fund for several years (one sure test of the business transacted), which stated the various amounts paid by the different Masters into that fund; and it would be found that the senior Master was at the head of the list, his payments having far surpassed in amount those of any one of his colleagues,—thus showing that the energies and abilities which had been so ably displayed for nearly 30 years, were still vigorous and unimpaired. Mr. Sudlow said he should not do justice to his own feelings, which he was sure concurred with the sentiments entertained by the Profession, if he did not express the grateful sense with which the urbanity and kindness that marked the Master’s conduct were remembered;—so that amidst the difficulties that surrounded and occasionally embarrassed the solicitor in dealing with important cases, his anxiety was essentially relieved by the courtesy and patience of the Master, and his readiness, so far as his advice and assistance could avail, to meet and remove whatever obstacle impeded the proceeding before him. The Legal Profession, and the Public also, owed a deep debt of gratitude to the Master for the judicious and temperate course taken by him on the subject of Law Reform. By his writings and by the evidence given under commissions, and especially before the Lords’ Committee, in 1851, his vast experience and sound judgment had enabled him to point out to Parliament and to Government such measures as were safe and salutary, and to check those hurried and impetuous alterations which in the eagerness for change were not weighed as they deserved, and were therefore, instead of introducing an improved system, calculated to lead to serious mischief and expense. In conclusion, he begged, in the name of himself and of the gentlemen then present, to assure the Master that, in quitting his office, he would be followed by their sin-

cere respect (perhaps he might be permitted to say, their affectionate respect), and their best wishes that his retirement might, among other consolations, be solaced by the pleasing recollections of a life honourably and usefully spent, and the hope that he and his family might enjoy for many years the blessings of health and continued prosperity. He (Mr. Sudlow) could not let the occasion pass without adding, also, his testimony to the ability, zeal, and urbanity which had always been displayed by Mr. Whiting, the Chief Clerk, in the management of the important business committed to his care, from which both the solicitor and suitor had derived the most essential advantages."

The following Address, signed by the gentlemen whose names are subjoined, was then read:—

"The undersigned solicitors desire, upon your retirement from office under the Masters' Abolition Act, to express the deep feeling of respect and gratitude which their experience of your services to the suitor, and your uniform kindness and attention to the practitioners, have led them to entertain."

The *Master*, in answer to the Address, said—

"If he consulted his own inclination, he should sink down into his chair and indulge in silence in the enjoyment of the very pleasing and grateful feelings, which the Address he then held in his hand, and the kind observations with which it had been presented, had awakened in him.

"Another reason for wishing to indulge himself in silence was, the consciousness that he could not find words fit to express the intensity and sincerity of those feelings.

"This expression of favourable opinion and approbation of his conduct as a Master, signed by so large a number of most highly respected and learned gentlemen who were experienced in the Masters' Offices, would, under the ordinary circumstances of resignation of office, have been very gratifying, but under the circumstances which had led to the abolition of the office of Master in Chancery, it was peculiarly acceptable and consolatory.

"When in March, 1824, Lord Chancellor Eldon conferred upon him the office of Master he formed the determination that he would use his best exertions so to discharge its duties as to gain the approbation and confidence of the profession, especially of that branch of it to which the deputation belonged. The proceedings of that day justified him in entertaining the conviction, that he retired from office having succeeded in carrying that determination into effect.

"The Master requested to be allowed to take that opportunity of acknowledging his sense of the efficient services of the two officers, who had assisted him in carrying on the work of the office. He alluded to Mr. Whiting and Mr. Slade.

"To his friend, Mr. Whiting, he made his cordial acknowledgment of the valuable assistance he had for many years rendered him. He had ever found in him a zealous, laborious, and able coadjutor. He had found united in him the useful qualities of one well practised in business with the pleasing manners of a gentleman.

"Although at his time of life, and in his state of health, after nearly 29 years' service, retirement from public life was acceptable, although he could not describe himself as

"*Ætatis primo sub flore cadentem* ;

yet he could say, that he quitted office with as fresh and lively a feeling about business (he might confess fondness for business), as he experienced when a young man at the bar.

"He was then about, for the probably short time that his life might be prolonged, to enter, he trusted, upon a state of comparative rest and quiet. Amongst the happy reflections of peaceful, musing old age, the kindness of the solicitors, through a long course of years, and especially their kindness that day, would form a prominent and never wearying subject. He would no longer detain them, but must entreat all those who had signed the Address, to accept all that he could offer in return,—'The tribute of a thankful heart.'

"To his friends, present and absent, he then said, 'Farewell,' not in the thoughtless, heartless manner in which that word was too commonly used; but in the fullest, deepest, and richest meaning of the word, comprehending his earnest wish and prayer for their happiness in time present and in futurity, he said, 'Farewell.'"

Mr. Whiting begged to express his deep sense of gratitude for the flattering manner in which his name been mentioned, as well by the deputation as by the Master, and stated, that had it not been for the confidence reposed in him by the Master, and his uniform kindness, he (Mr. Whiting) could not have transacted the business of the office; and he trusted that in the office he now held he should be equally successful in his exertions for the benefit of the suitors and the Profession.

The deputation then withdrew.

The following are the Names of the Subscribers to the Address.

Austen and De Gex.  
Richard B. Armstrong, Staple Inn.  
Aldridge and Bromley.  
George Frederick Abraham, 6, Great Marlborough Street.  
Charles Arrowsmith, jun.  
Bailey, Shaw, Smith, and Bailey.  
Bell, Steward, and Lloyd.  
Burgoyne, Thrupp, and Clark.  
G. Bower.  
Thomas Holmes Bower.  
Bockett and Cowburn, 60, Lincoln's Inn Fields.  
Bridges, Mason, and Bridges, Red Lion Square.

Brooksbank and Farn, Gray's Inn.  
 Brace and Colt.  
 Reginald Bray, 57, Great Russell Street.  
 Bloxam and Ellison.  
 Sidney Beasley.  
 Baxter and Somerville, 48, Lincoln's Inn Fields.  
 Baker, Ruck, and Jennings, 34, Lime Street.  
 John Arthur Buckley.  
 W. A. Boyle, 17, Clements' Inn.  
 John P. Bolding.  
 T. S. Burton.  
 L. R. Bellamy.  
 Thomas Bateman.  
 Coverdale, Lee, and Purvis.  
 Clayton, Cookson, and Wainwright.  
 Clowes, Wedlake, and Co.  
 Chilton, Burton, and Johnson.  
 Capes and Stuart.  
 W. Chisholme.  
 Church and Son.  
 Child and Kelly.  
 T. F. Crew, 38, Essex Street, Stand.  
 F. S. Clayton.  
 George W. Frederick Cooke.  
 William Tredway Clarke.  
 James Crowdy.  
 Alfred Richard Cocker, 23, Gower Street.  
 J. W. Christmas, 6, Raymond Buildings.  
 D. Cullington, 2, Craven Street, Strand.  
 Currie, Woodgate, and Williams.  
 Denton, Kinderley, and Domville.  
 Desborough, Young, and Desborough.  
 Charles Druce and Sons.  
 Dobinson and Geare.  
 William Dyson.  
 T. Dufaur.  
 C. Beville Dryden.  
 W. L. Donaldson.  
 F. N. Devey.  
 Frere, Goodford, and Cholmeley, 6, New Square.  
 Few and Co.  
 Fuller and Saltwell.  
 J. E. Fox and Son.  
 Thomas W. Flavell.  
 James Fluker.  
 John Elliott Fox  
 Gregory, Faulkner, and Co.  
 Nicholas Gedye.  
 W. A. Greatorex.  
 William Gresham.  
 Hume, Bird, and Hume.  
 C. and H. Hyde, Ely Place.  
 Leonard Hicks, Gray's Inn.  
 L. H. Hicks, Gray's Inn.  
 Hanrott and Son, 29, Queen's Square.  
 G. Helder, 38, Great James Street.  
 Henry W. Hewlett, 2, Raymond Buildings.  
 Hore and Sons.  
 George Marsh Harrison.  
 James Hooker, 8, Bartlett's Buildings.  
 Isaacson and Alderson.  
 Janson and Cooper.  
 Julius and Cameron, Buckingham Street.  
 Keightley, Cunliffe, and Beaumont.  
 Thomas Kennedy.  
 Lyon, Barnes, and Ellis.

R. M. and F. Lowe.  
 J. H. and G. Lake.  
 Thomas Leadbitter.  
 James B. Lowndes.  
 Lawrence and Kirkpatrick.  
 Elijah Litchfield.  
 Lee and Pemberton.  
 A. M<sup>A</sup>. Low.  
 William Ley.  
 Metcalfe, Woodhouse, and Parkin.  
 Meredith, Reeve, and Co.  
 Mourilyan and Rowsell.  
 Thomas Mortimer, Albany.  
 Joshua Mayhew.  
 R. Maugham.  
 Norris, Allen, and Simpson.  
 Palmer, France, and Palmer.  
 Price and Bolton.  
 Henry Philipps, 4, Sise Lane.  
 Charles Pugh.  
 George Pyke.  
 James Peachey.  
 Roumieu, Walters, and Co.  
 J. and C. Robinson.  
 John G. Reynell, 10, Staple Inn.  
 Willoughby Rackham.  
 H. Syme Redpath.  
 Rixon and Son, 11, King William Street.  
 Sudlows, Torr, and Janeway.  
 Sharpe, Field, and Jackson.  
 Smedley and Rogers.  
 George Smith, 4, Stone Buildings.  
 Scott and Tahourdin, Lincoln's Inn Fields.  
 R. B. Sanders, 1, New Inn.  
 Leigh C. Smyth.  
 George Smith and Son.  
 Charles Smith, 44, Bedford Row.  
 Richard Smith, 298, Holborn.  
 Richard Smith, jun.  
 Tooke, Son, and Hallows, 39, Bedford Row.  
 Tatham, Upton, Upton, and Johnson.  
 Trinder and Eyre, 1, John Street.  
 Tilson, Clarke, and Morice.  
 Thompson, Debenham, and Brown, Salters' Hall.  
 Taylor and Collisson.  
 Tatham and Son.  
 Tucker and Sons.  
 J. H. Turner, 8, Chancery Lane.  
 J. Tepper, Great James Street.  
 Tippetts and Son, 2, Sise Lane.  
 Henry Thomas.  
 Wilde, Rees, Humphry, and Wilde.  
 Walker, Grant, and Co.  
 Thomas White and Sons.  
 Westmacott, Blake, and Blake.  
 Wright and Kingsford.  
 Willan and Stevenson, 35, Bedford Row.  
 George Weller.  
 Edward T. Whitaker, 12, Lincoln's Inn Fields.  
 T. M. Wilkin, 8, Furnival's Inn.  
 George Whiting.  
 Henry Weeks.  
 Thomas Walker.  
 J. L. Wright.  
 Philip J. Wingfield.  
 Thomas Wootton.

J. K. Wright, 25, Bedford Row.  
 Edward Williamson.  
 Edward E. Whitaker.  
 Young and Vallings, St. Mildred's Court.  
 Jos. Muskett Yetts.

## ADVANCES FOR WITNESSES AT A TRIAL.

*To the Editor of the Legal Observer.*

SIR,—Some very painful questions have lately arisen in the Courts, with regard to the expenses of witnesses included in attorneys' bills under taxation, and which, though not paid, were alleged to have been paid. It has occurred to some gentlemen that the present mode of remunerating witnesses is faulty, and might be placed upon a better footing, so as at once to secure the proper payment to the witness, and relieve the attorney from the hardship of disbursing moneys before he receives them, and which, having paid, he not unfrequently loses. A letter on this subject was lately sent to me by a highly respectable solicitor, which contains a few remarks well worthy of consideration, and if they were submitted to your readers, they might serve to direct the attention of the Profession to the utility of some change in the practice.

S.

"It is of frequent occurrence in the taxation of costs on verdicts at Common Law, that difficulties and trouble arise in vouching the items for witnesses' expenses and compensation for loss of time, from the unwillingness of the party, or his attorney, to make the necessary payments in anticipation of the taxation of the costs, and of their recovery under the judgment. The consequences are, in some cases, a resort to some improper pretence of payment; and, on many occasions, a total loss by the party, or his respectable attorney, of sums advanced for these purposes, from the inability of the suitor to recover his damages and costs.

"This appears to me to be an evil requiring, and capable of redress; for it affects the Public not less than the Profession. It can hardly be expected that a respectable attorney will take up the case of a poor and humble client, who may have to contend with a dishonest party, or one of doubtful means, when the result may be, that he must either out of his own pocket defray the expenses of witnesses, with the risk of not being reimbursed, or place himself in the doubtful position of repudiating the witnesses' claims upon him,—or of being unable to secure their attendance at the trial from the want of means,—or, having induced them so to attend, of omitting the only means (the pre-payment of their expenses, &c.) of securing the chance of reimbursement.

"Why should it be a *sine qua non* in the taxation of costs, that the actual payment of every item charged out of pocket should be vouched before the Taxing Master gives his allocatur? Why should it not suffice, that the attorney

gave his written undertaking at the foot of his bill, filed with the officer of the Court, for the immediate liquidation of the items in question, after the damages and costs had been recovered. It will be said, probably, that such an alteration in the system would open a door for fraud; and that in many cases sums, which had been allowed on the attorney's undertaking, would never, in fact, be paid, but pocketed by the attorney, or his client. Is it fair or just, however, towards an honourable or liberal Profession, to allow the continuance of a great evil, because its remedy may occasionally be abused? It should also be borne in mind that the present system is open to frauds and abuses, and that the change I have suggested will afford the following checks upon abuse: There will be the attorney's filed undertaking—his responsibility to the Court—on the motion of his client—of the witnesses: the party paying the costs, of his attorney, and the Law Society. What better protection can be had against abuse? It might in addition be required from the attorney's undertaking, that the vouchers should be lodged with the Master within a reasonable time after the recovery of the debt and costs.

"Why should an attorney be placed on a different footing to the merchant or tradesman? How absurd would it be to require either to vouch the payment by him for the article dealt in, or for the materials or labour, before he could dispose of it, or recover the price and value in an action at law. The law wisely considers such claims as *res inter alios acta* and ignores them.

## DEFECTIVE PRACTICE IN EJECTMENT.

*To the Editor of the Legal Observer.*

SIR,—Can you, or any of your correspondents, enlighten me upon the following point of practice in ejectment under the Common Law Procedure Act, which must be of very common occurrence, but which appears to disclose a "*casus omissus*."

A., the plaintiff, brings ejectment against B., his lessee, and C. and D., under-tenants in possession of certain land; B. enters an appearance and defends for the whole land as landlord; C. and D. enter no appearance and do nothing. Is it necessary that judgment should be signed against C. and D. by default? The old practice was, to sign a judgment against the casual ejector in such a case, and execution was restrained till the question was decided with the landlord; but the forms of judgment given in Schedule A. of the Common Law Procedure Act evidently contemplate no such proceeding. It is submitted that the intention of the Legislature was, that no judgment should be signed, except against the party making defence, yet there appears nothing to prevent C. and D. entering an appearance, even after a verdict against B., and tutting A. to the expense and delay of another trial.

It is suggested that the difficulty would be met by the Judges adding a rule in ejectment prohibiting an appearance after the 16 days limited by the writ without an order of the Judge made on special circumstances shown.

LINCOLN'S INN.

## NOTES OF THE WEEK.

### REMOVAL OF THE COURTS FROM WESTMINSTER.

Lord Robert Grosvenor has given notice of his intention to present a petition from the Incorporated Law Society, for the removal of the Courts of Law from their present site to a more convenient locality.

A deputation from the Council of the Society attended his Lordship last week, and we are glad to learn that he very cordially supports the application, as well for the sake of the convenient administration of justice, as for the improvement of the centre of the metropolis, in which the new Palace of Justice is proposed to be placed.

### REPEAL OF THE ANNUAL CERTIFICATE TAX.

At present the motion of Lord R. Grosvenor, for leave to bring in the Bill to repeal the Certificate Duty, stands for Tuesday, the 1st March. It is rather late on the list of the day, but we shall be able in our next Number to give some further information on the subject. In the mean time, petitions

should be prepared and in readiness to be forwarded.

We yet hope the Government will have the credit of performing an act of common justice, in carrying out the decision of the late Parliament, unequivocally expressed on five several divisions.

### LAW APPOINTMENTS.

The Attorney-General has nominated Mr. *John Wickens* and Mr. *Thomas Hull Terrell* to represent him in Equity, in the matters relating to Public Charities. The Right Hon. Gentleman has also selected Mr. *Alfred Hanson* to be Counsel in Equity to the Board of Works, and to the Commissioners of Stamps and Taxes. The above offices are vacant by the appointment of Mr. W. M. James to the office of Vice-Chancellor of the Duchy of Lancaster in the room of Mr. Bethell, her Majesty's Solicitor-General.

### COLONIAL LAW APPOINTMENTS.

The Queen has been pleased to make the following appointments for the Colony of Victoria, viz., *Edward Eyre Williams*, Esq., to be second Puisne Judge of the Supreme Court; *William Foster Stawell*, Esq., to be her Majesty's Attorney-General; *James Croke*, Esq., to be her Majesty's Solicitor-General; *Henry Field Gurner*, Esq., to be Crown Solicitor; *Robert Williams Pohlman*, Esq., to be Commissioner of the Court of Requests and Chairman of General and Quarter Sessions; *Frederick Wilkinson*, Esq., to be Master in Equity of the Supreme Court, and Chief Commissioner of Insolvent Estates.—From the *London Gazette* of 15th of February.

## RECENT DECISIONS IN THE SUPERIOR COURTS AND SHORT NOTES OF CASES.

### Court of Appeal.

*Baillie v. Jackson.* Feb. 15, 16, 1853.

ENROLMENT OF DEED IN ST. VINCENT.—  
VERIFICATION OF SIGNATURE OF REGISTRAR OF COURTS.

Held, that it was necessary to prove the authenticity of the signature of the registrar of the Courts at St. Vincent to his certificate of the due enrolment of a deed of conveyance, under the 14 & 15 Vict. c. 99, s. 14, and the 15 & 16 Vict. c. 86, s. 22.

In this case, the enrolment of a deed of conveyance in the Courts at St. Vincent was proved by the certificate of the registrar of those Courts, and a question arose, whether it was necessary to prove the authenticity of his signature.

*Smythe* now applied, by the direction of Vice-Chancellor *Stuart*, and referred to the 14 & 15 Vict. c. 99, s. 14, which enacts, that "whenever any book or other document is of such a public nature as to be admissible in evi-

dence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice," "provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted;" and to the 15 & 16 Vict. c. 86, s. 22, which provides, that "the Judges and other officers of the said Court of Chancery shall take judicial notice of the seal or signature, as the case may be, of any such "person" "attached, appended, or subscribed to any such pleas," &c., "or other documents to be used in the said Court."

The Court held, that a document signed by the registrar was not one of which, according to the Act, judicial notice could be taken, and that the certificate was not receivable in evidence.



— v. —. Feb. 15, 1853.

**AFFIDAVITS SWORN IN COLONIES. — VERIFICATION. — EQUITY JURISDICTION IMPROVEMENT ACT.**

Held, that the 15 & 16 Vict. c. 86, s. 22, is retrospective in its operation, and that affidavits sworn at Bathurst, in Australia, before a gentleman describing himself as duly authorised to take affidavits in New South Wales, and which were taken before the Act came into operation, could be received in evidence without his signature, &c., being verified.

It appeared that certain affidavits necessary in this cause had been sworn at Bathurst, in Australia, before a gentleman describing himself as duly authorised to take affidavits in the Supreme Court of New South Wales.

*Elderton* applied, at the suggestion of Vice-Chancellor *Kindersley*, for the direction of the Court in reference to the question, whether the old form of verification was necessary under the 15 & 16 Vict. c. 86, s. 22,—the affidavits having been sworn before that Act came into operation.

The Court said, that the Act had a retrospective operation, and that the affidavits could therefore be received.<sup>1</sup>

**Lord Chancellor.**

Feb. 9.—*In re Sagarzurieta*—Order on petition for transfer of fund by Commissioners for the Reduction of the National Debt to the curator of lunatic on evidence of her identity and of his properly being appointed, and for payment to him of the dividends.

— 9.—*In re Worcester Corn Exchange Company*—Order for call discharged, without costs.

— 10.—*In re Tharp*—Order for payment to committee of expenses on estate, and for allowance in his accounts.

— 10.—*In re Fussell*—Stand over.

— 10.—*Edwards v. Champion*—Part heard.

— 11, 12. — *Attorney-General v. Sheffield Gas Consumers' Company*—Part heard.

— 12.—*In re Turner, ex parte Crosthwaite*—Order for sale of shares and for credit to be given to the estate for one-half the produce.

**Lords Justices.**

*In re Byrom and others, ex parte Eckersley and others.* Jan. 26; Feb. 14, 1853.

**BANKRUPT LAW CONSOLIDATION ACT.—OWNER OF COLLIERY.—RIGHT OF "DRAWERS" TO PROVE FOR WAGES.**

Held, confirming the decision of Mr. Commissioner *Skirrow*, that the "drawers" in a coal mine, who are brought by the colliers upon being hired to remove the coal when worked to the pit's mouth for carriage to the surface, and are liable to be dismissed only by such col-

liers, and not by the owners or manager of the pit, are not within the 13 & 14 Vict. c. 106, s. 169, as "workmen or labourers" of the bankrupt owners, and that they are not therefore entitled to receive under that section their wages due not exceeding 40s.

THIS was an appeal from Mr. Commissioner *Skirrow* refusing the proof under this bankruptcy for wages of certain drawers who were employed to remove coal in the bankrupt's colliery to the pit's mouth, or bottom of the shaft for carriage to the surface. It appeared that it was the custom for the colliers who work the coal from the seam, upon being hired, to bring the drawers with them, and to pay them out of their wages. All persons employed in the pits were under the general regulations of the owners, and under the orders of the overlooker, so far as regarded the due performance of their duties. The collier could discharge the drawers, and he was liable to be discharged if he acted unjustly.

*Rogers*, in support, referred to the 13 & 14 Vict. c. 106, s. 169, which enacts, that "when any bankrupt shall have been indebted at the time of issuing the fiat or filing the petition for adjudication of bankruptcy to any labourer or workman of such bankrupt, in respect of the wages or labour of such labourer or workman, it shall be lawful for the Court, upon proof thereof, to order so much as shall be so due, not exceeding 40s., to be paid to such labourer or workman out of the estate of such bankrupt; and such labourer or workman shall be at liberty to prove for any sum exceeding such amount."

*J. V. Prior*, for the assignees, contra.

*Cur. ad. vult.*

The Lords Justices said, there was not such a contract between the bankrupts and the drawers as could bring the case within the section cited, and that the latter had no right of action against the bankrupts. The appeal must therefore be dismissed—the costs of all parties to be paid out of the estate.

*Hill v. Edmonds.* Feb. 15, 1853.

**FORECLOSURE CLAIM.—DECREE.—EQUITY OF WIFE OF INSOLVENT TO SETTLEMENT.**

A husband, who was tenant by courtesy of certain freehold property and entitled to certain leasehold premises absolutely in right of his wife, mortgaged his interest therein to the plaintiffs, and afterwards to other parties, and then became insolvent: Held, confirming the decision of the late Vice-Chancellor *Parker*, that the plaintiffs were entitled to the ordinary foreclosure decree on a claim, and that the wife, who was made a defendant, had no equity to a settlement out of the leaseholds.

THIS was an appeal from the decision of the late Vice-Chancellor *Parker*, to make the common foreclosure order on this claim. It appeared that the defendant, *Joseph Bullock*, had mortgaged for 300*l.* his interest in certain free-

<sup>1</sup> See *Brooks v. Levy*, ante, p. 232.

hold property, of which he was tenant by curtesy, and in certain leasehold premises to which he was entitled absolutely in right of his wife. He afterwards mortgaged them to other parties, and subsequently took the benefit of the Insolvent Act. His Honour having held, that the defendant and his wife were not entitled to a settlement on the latter out of the leasehold property, this appeal was presented.

*Malins and W. Hislop Clarke* for the plaintiffs; *J. Sidney Smith* for the defendant and his wife, cited *Sturgis v. Champneys*, 5 Myl. & Cr. 97; *Hanson v. Keating*, 4 Hare, 1.

*Bacon and Bickner* for other parties.

The Lords Justices said, that as to the freeholds, the plaintiff's right of course only extended to the life interest of the husband, but with regard to the leaseholds, the legal estate vested in them, exactly as if the husband had assigned it to them, and that their right could not therefore be in the slightest degree affected by any equity the wife might have for a settlement. The appeal would accordingly be dismissed.

Feb. 8, 9. — *Brenan v. Preston* — Order for stay of action at law, for cancellation of bail bond and discharge of bail, and for plaintiff at law to pay the costs of motion and of action.

— 9, 10, 14. — *Great Western Railway Company v. Oxford, Worcester, and Wolverhampton Railway Company and others* — *Cur. ad. vult.*

— 14, 15. — *Derbshire v. Home* — *Cur. ad. vult.*

### Master of the Rolls.

*Abrey v. Newman*. Jan. 29, 1853.

WILL. — CONSTRUCTION. — CHILDREN TAKING PER CAPITA.

A testator by his will devised certain property to be equally divided between J. and his wife, and A. and his wife, for the period of their natural lives, after which "to be equally divided between their children—that is the children of J. and A.:" Held, that such children took per capita and not per stirpes.

The testator by his will gave all his property therein named to be equally divided between Benjamin James and his wife Ann James, and Charles Abrey and his wife, for the period of their natural lives, after which to be equally divided between their children—that is, the children of Benjamin James and Charles Abrey. It appeared that Benjamin James and Charles Abrey were dead, and the question arose whether their children took per capita or per stirpes.

*Cur. ad. vult.*

The Master of the Rolls said, that the children were entitled per capita and not per stirpes—the costs to come out of the estate.

*Attorney-General v. Pretzman*. Feb. 8, 1853.

JURISDICTION IN EQUITY IMPROVEMENT ACT. — SUPPLEMENTAL ORDER UNDER S. 52. — PRACTICE WHERE DEFENDANT DOES NOT APPEAR.

Motion granted to enter an appearance, under the 15 & 16 Vict. c. 86, s. 52, for a defendant who refused to appear after service of a supplemental order.

A SUPPLEMENTAL order had been obtained under sec. 52, of the 15 & 16 Vict. c. 86, and it had been duly served on Mr. Woodward a defendant.

Terrell now moved to enter an appearance for such defendant, on his refusing to appear under the 52nd section which enacts, that "an order so obtained, when served upon the party or parties who, according to the present practice of the said Court, would be defendant or defendants to the bill of revivor or supplemental bill, shall from the time of such service be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained, according to the existing practice of the said Court; and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the Office of the Clerks of Records and Writs, within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him."

The Master of the Rolls made the order as asked.

*Minton v. Wilmot*. Feb. 15, 1853.

WILL. — CONSTRUCTION. — WHAT PASSES UNDER DEVISE OF HOUSEHOLD GOODS, &c.

A testator gave to his wife all his household goods and furniture, plate, linen, china, paintings, pictures, books, wines, spirits, and all other his moveable household chattels, in or belonging to his present dwelling-house at the time of his decease: Held, that silver medals which the testator had gained as prizes as a gardener, and which were suspended in a frame to the wall of the sitting-room, passed to the widow.

THE testator, Mr. Wilmot, by his will, gave to his wife all his household goods and furniture, plate, linen, china, paintings, pictures, books, wines, spirits, and all other his moveable household chattels, in or belonging to his present dwelling-house at the time of his decease. It appeared that the testator had several silver medals which he had obtained as prizes in his business as a gardener, and which were placed in a frame together and suspended in his sitting-room. A question arose, whether the widow was entitled to the medals under the will.

R. Palmer, Craig, and Bevir, appeared for the respective parties.

The Master of the Rolls said, that the widow was entitled to the medals.

*Andrews v. Andrews.* Feb. 14, 1853.

CLAIM.—ENFORCING AWARD, WHERE MADE A RULE OF COURT.—LACHES.

*A claim was dismissed, but without costs, seeking to enforce the performance of an award, which had been made a rule of Court, where the agreement of reference, which related to the division of certain quarries among the family of the deceased owner, was made in April, 1844, and the plaintiff, although ejected in 1848 from the property arranged to come to him, had only now filed his claim to enforce his rights.*

THIS was a claim to enforce the performance of an award made under an agreement of reference in April, 1844, for the division of certain stone quarries belonging to Thomas Andrews, deceased, among his family. It appeared that in 1848, the plaintiff was ejected out of the part of the property in his occupation, but he had taken no steps in reference thereto until he filed this claim.

*R. Palmer and Cole* for the plaintiff; *Hare and J. V. Prior* for the defendants.

The Master of the Rolls said, that after the great lapse of time, Equity would not interfere, and there was no reason why the Court of which the award was made a rule should not be applied to enforce it. The claim would therefore be dismissed, but, under the circumstances, without costs.

Feb. 9.—*In re London Dock Company, ex parte Blake*—Order for transfer of fund to trustees of marriage settlement.

—9.—*Hele v. Lord Bealey*—Part heard.

—10.—*Bateman v. Margerison*—Judgment on exceptions to Master's report.

—10.—*Senior v. Pritchard*—Common injunction to restrain action at law until defendants should put in an answer.

—11.—*York and North Midland Railway Company v. Hudson*—Decree for account.

—14.—*Fullford v. Fullford*—Bill dismissed, with costs, as against executor of will, and common administration decree.

—14.—*Mostyn v. Mostyn*—Judgment on construction of will.

—15.—*Hart v. Trihe*—Exceptions allowed to Master's report.

—15.—*Stephenson v. Jones*—Decree for foreclosure.

Vice-Chancellor Kindersley.

*Herbert v. Bateman.* Feb. 12, 1853.

SHARES IN JOINT STOCK BANK.—BONUSES.—INCOME.—CAPITAL.

*Part of the estate of a testator consisted of shares in a joint stock bank, upon which the directors had declared three bonuses, and which they added to and paid with the dividends: Held, that such bonuses were in the nature of income and not capital.*

It appeared that part of the estate of the

testator in this case consisted of certain shares in the London and Westminster Joint Stock Bank, and a question arose whether three bonuses which had been declared thereon were to be considered as income or capital. It was the practice of the directors of the bank to add the bonuses to the dividend due on the shares as they were declared from time to time.

*Stevens, Kennion, Cairns, Bateman, and Druce*, appeared for the several parties. *Ward v. Combe*, 2 Sim. 634, was cited.

The Vice-Chancellor said, that as the directors treated the bonuses as income, and added them to the dividends, they must be considered as income and not as capital.

Feb. 9, 10, 11, 12.—*Turner v. Blamire*—Injunction refused, with costs.

—14, 15.—*Pennell and another v. Ray*—Injunction granted.

Vice-Chancellor Stuart.

*In re Colquhoun.* Feb. 12, 1853.

SOLICITOR.—WHERE ACTING FOR SEVERAL DEFENDANTS.—TAXATION.

*Rule of taxation disapproved of in reference to the allowance of costs where one solicitor acts for several defendants in a suit.*

THIS was a petition on behalf of the assignees of a Mr. Colquhoun, who had acted as solicitor to the several defendants in a suit, but had been changed in 1851 upon his bankruptcy, for a reference back of his bill of costs to the Master to review the taxation. The Master had reduced the bill from 112*l.* to 39*l.*, on the principle that where the same solicitor acted for several defendants his bill of costs against each formed a portion of one bill of costs, which was alone allowed.

*Russell and W. Hislop Clarke* in support; *Glasse and F. J. Hall* contra.

The Vice-Chancellor said, he much regretted that the principle on which the bill had been taxed was too well settled to be disturbed, as it was a most unwise policy to remunerate solicitors inadequately, and a practice which tended to lead them to make charges for services which were unnecessary. The petition was therefore dismissed.

*Robinson v. Briggs.* Feb. 15, 1853.

EXAMINATION OF DEFENDANT ON BEHALF OF PLAINTIFF.—DECREE.

*Held, that the examination of a defendant on behalf of plaintiffs does not, since the 14 and 15 Vict. c. 99, preclude their taking a decree against him and those claiming under him.*

THIS was a bill on behalf of the children against the trustees of a settlement, to set aside a conveyance of the settled property. It appeared that one of the defendants, Mr. Briggs, had been examined as a witness in April, 1852, and the plaintiffs having read such evidence

in support of their case, it was objected a decree could not be taken against him and those claiming under him.

*Walker, Bacon, Rogers, Daniel, Renshaw, and Selwyn*, for the defendants, in support of the objection.

The *Vice-Chancellor* (without calling on *Malins, Elmsley, Allnutt, and Henry Stevens*, for the plaintiffs) said, under the 14 & 15 Vict. c. 99, a plaintiff might examine a defendant as a witness, without the qualification contained in Lord Denman's Act, 6 & 7 Vict. c. 85, and the plaintiffs might clearly exercise their right without forfeiting their claim to a decree, and the objection must therefore be overruled.

Feb. 9.—*Smith v. Edwards and others*—Bill dismissed without costs.

—10.—*Attorney-General v. Barker*—Charity scheme arranged.

—12, 14.—*In re Overhill's Trusts*—Stand over for re-argument.

—11, 14, 15.—*Robinson v. Briggs*—Part heard.

—15.—*Baillie v. Jackson*—Judgment on construction of marriage settlement, and order for payment of money to petitioners.

#### **Vice-Chancellor Wood.**

*Green v. Barrow.* Feb. 12, 14, 1853.

LEGACY TO EXECUTORS.—LAPSE WHERE ONE PREDECEASES TESTATOR.—CARE OF LUNATIC DAUGHTER.

*A testator gave a legacy of 400l. to his executors and trustees for life, in consideration of the care of his lunatic daughter, with a proviso that on the death of both trustees, the whole 400l. was to go to the representatives of the survivor. One of the trustees predeceased the testator: Held, that his share in the legacy lapsed.*

MR. HERREY, by his will, gave a legacy of 400l. to his executors and trustees for life in consideration of the care of his lunatic daughter, with a proviso that, on the death of both trustees, the whole 400l. was to go to the representatives of the survivor. It appeared that one of the trustees had pre-deceased the testator, and the Master had held that his share lapsed. The case now came on upon further directions.

*R. Palmer* for the plaintiff; *Rolt, Selwyn, and Wickens* for the defendants.

The *Vice-Chancellor* said, that as it could not be presumed to have been the intention of the testator, if both the trustees had died before undertaking the care of his daughter, the whole 400l. should have gone to the representatives of the survivor, the deceased trustee's share of the legacy lapsed.

*Clayton v. Illingworth.* Feb. 15, 1853.

CLAIM.—SPECIFIC PERFORMANCE OF AGREEMENT FOR YEARLY TENANCY.

*A claim was dismissed with costs to enforce the specific performance of an agreement of*

*a farm-house and land, where no term was fixed for the tenancy.*

*C. Hall and W. Forster* appeared in support of this claim to enforce the specific performance of an agreement to take a farm-house and certain land at Kippax, in Yorkshire.

*Rolt and Humphry* contra, on the ground no term was fixed for the tenancy, which therefore amounted to a tenancy from year to year.

The *Vice-Chancellor* said, that the objection must be allowed, and dismissed the claim accordingly.

Feb. 9.—*Butchart v. Dresser*—Account to be taken of sale of shares.

—9.—*Robinson v. Governors of London Hospital*—Order for transfer of shares to hospital, by arrangement.

—10.—*Gurney and others v. Behrend and others*—Injunction dissolved on terms.

—11.—*Hicks v. Sallitt*—*Cur. ad. vult.*

—11.—*Ex parte Trustees for Burgesses of Newcastle-on-Tyne, in re North Staffordshire Railway Act*—Order approving re-investment of purchase money.

—11.—*Kelson v. Kelson*—Direction for formal order to be drawn up herein.

—12, 14.—*Langton v. Langton*—Exceptions overruled.

—14.—*Bague v. Dumerque*—*Cur. ad. vult.*

—15.—*Forbes v. Richardson*—Part heard.

#### **Queen's Bench.**

*In re Hawley.* Jan. 17, 1853.

ATTORNEY.—COMMITTAL FOR REFUSING TO ANSWER QUESTIONS UNDER BANKRUPT LAW CONSOLIDATION ACT.

*Motion for habeas corpus refused to bring up the body of an attorney who had been committed to prison under the 13 & 14 Vict. c. 106, s. 260, for not answering certain questions in reference to matters which came to his knowledge, not as the attorney of a bankrupt, but as his friend, although under a solemn promise of secrecy.*

THIS was a motion for a writ of habeas corpus directed to the keeper of the Queen's Prison, commanding him to bring up the body of H. J. T. Hawley, an attorney, who had been committed to prison by Mr. Commissioner *Fonblanque*, under the 13 and 14 Vict. c. 106, s. 260. It appeared that he had been employed by a bankrupt named *Grant*, and had, upon being summoned as a witness, refused to answer, on the ground of privilege, certain questions put to him as to whether the bankrupt had told him his intention to leave England, and to what port he intended to go. Mr. Hawley now stated he received the information under a solemn promise not to divulge it.

*Sawyer* in support.

The Court said, there was nothing to show the communication was made to Mr. Hawley in the course of any matter or business in

which he was acting as the bankrupt's attorney, but that it was rather given in the capacity of a friend, and the application was therefore refused.

### Court of Common Pleas.

*Winch v. Winch.* Jan. 20, 1853.

COUNTY COURTS' ACT.—JURISDICTION IN PLAINT TO RECOVER LEGACY FOR 50*l*.

*New trial ordered of plaintiff to recover a legacy of 50*l*. from an executrix, where the Judge had given judgment for the defendant, on the ground of want of jurisdiction.*

THIS was an appeal under the 14 & 15 Vict. c. 61, s. 14, from the Judge of the Kent County Court, held at Margate, who had given judgment for the defendant in this plaint, to recover a legacy of 50*l*. from her as executrix, on the ground of want of jurisdiction.

*Byles, S. L.*, in support, referred to the 13 & 14 Vict. c. 61, s. 1, extending to 50*l*., the provision of the 65th section of the 9 & 10 Vict. c. 95, which enacts, that "the jurisdiction of the County Court under this Act shall extend to the recovery of any demand, not exceeding the sum of 20*l*., which is the whole or part," "of any legacy under a will."

*Channell, S. L.*, for the defendant.

The Court said, that the County Court had jurisdiction, and ordered a new trial.

### Court of Exchequer.

*Simmons v. Lilleystone.* Jan. 27; Feb. 12, 1853.

ACTION FOR OBSTRUCTING PLAINTIFF IN ENJOYMENT OF PUBLIC RIVER.—CONVERSION OF TIMBER.—VENUE.—MISDIRECTION.

*Where an objection was only taken after verdict, that the venue was local of an action against the defendant for obstructing the plaintiff in his enjoyment of the river Thames, by filling up a creek adjoining his premises: Held, that as the declaration did not allege anything which compelled the plaintiff to prove any act in the venue selected by him, he was entitled to retain his verdict.*

*A count in the declaration was for converting certain timber. It appeared that the timber was buried in the soil of the creek by the defendant, in the exercise of an alleged custom, and he afterward dug a saw-pit, and the wood had floated away with the tide: Held, that this did not amount to a conversion.*

*The Judge left to the jury the bona fides of the defendant in digging the saw pit, held a misdirection.*

THE first count of the declaration in this action was, in case against the defendant for obstructing the plaintiff in his enjoyment and use of a portion of the river Thames, by filling up a creek adjoining his premises at Milton-cum-Gravesend, in Kent, and the second count was in trover, for taking and converting certain

timber. The defendant pleaded not guilty to the whole declaration, and justified the alleged obstruction in the first count, under a custom for the owners of lands abutting on the river, to embank the shore between high and low water-mark, and the conversion in the second count on the ground that he necessarily cut the timber which was wrongfully put by the plaintiff on his close in digging a saw-pit. The plaintiff replied *de injuria*. On the trial before *Pollock, L. C. B.*, at the London Sittings after Michaelmas Term last, the jury found that no such custom existed as alleged by the defendant, and returned a verdict for the plaintiff, on the first count, with 1*s*. damages, and on the second count with 60*l*. damages, on the ground that the defendant did not *bona fide* dig the saw-pit, but had purposely cut and destroyed the plaintiff's timber, which he knew was lying under the soil he had thrown into the creek under the alleged custom. It appeared that the timber upon being cut had floated away with the tide. This rule had been obtained on Jan. 27 last, to enter a verdict for the defendant on the first count, and for a new trial on the second, upon the ground that the facts did not amount to a conversion, and that the jury had been wrongly directed to take into consideration the *bona fides* of the defendant in digging. It was also contended, that the plaintiff had failed to show any special damage, although he declared on a public right, and that the venue should have been laid in Kent, where the cause of action arose.

*Skee, S. L.*, and *Rose*, showed cause against the rule; which was supported by *Willes* and *Honyman*.

*Cur. ad. vult.*

The Court said, that although the action might be local, yet as the objection was not taken until after verdict, the only question was, whether the plaintiff was compelled by any allegation in his declaration to prove any act done in the venue selected by him, and as it did not appear to be so, he was entitled to retain his verdict on the first count. As to the second count, the facts did not amount to a conversion, and the verdict must be entered for the defendant, on the plea of not guilty. Although there had been a misdirection in leaving the question of *bona fides* in digging the saw-pit to the jury, it would be useless to grant a new trial, as the plea was bad for not alleging the plaintiff had buried the timber. The jury should therefore be discharged as to that plea, and a *stet processus* be entered as to the whole action.

Feb. 12.—*Pearson, clerk, v. Beck*—Rule for new trial discharged.

—12.—*Bull v. Chapman*—On demurrer to plea, judgment for defendant.

—12.—*Clay v. Crow*—Judgment for plaintiff on demurrer to plea.

—12.—*Arnold v. Gausson and another*—Judgment for defendants.

—12.—*Tanner v. Woolmer*—Rule discharged to enter verdict for the plaintiff.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## LAW RELATING TO SHERIFFS.

## ASSIGNEES OF BANKRUPT.

**Right to recover back money paid.—Judgment debtor.**—The defendant having recovered judgment against *H.*, on the 25th of April lodged with the plaintiff, who was the sheriff, a writ of *fi. fa.* The plaintiff neglected to execute the writ until the 11th of May, when he seized the goods of *H.* and assigned them to the defendant by bill of sale, which stated the consideration to be 256*l.* paid by the defendant to him. He then returned *feri feci*. Before the seizure the defendant had notice of an act of bankruptcy committed by *H.* before the 25th of April, upon which a fiat issued in August, and assignees were appointed, who sued and recovered from the plaintiff the value of the goods seized, whereupon he brought the present action to recover back the money so paid: *Held*, first, that though no money in fact passed, the plaintiff and defendant were, as between themselves, in the same situation as if the plaintiff had sold the goods to the defendant and received the money. Secondly, That, though the money was not the plaintiff's, still he was entitled to recover, since it was money which he ought to have received as soon as he had been compelled by the owner to pay for the goods seized. Thirdly, That in this action the plaintiff was not estopped by his return from saying that the then title of the debtor was defeated by matter subsequent. Lastly, That the money having been paid by the plaintiff in ignorance of the facts, he was entitled to recover it back, although the defendant could not in every respect be placed in *statu quo*.—*Standish v. Ross*, 3 Exch. R. 527.

## BAIL BOND.

**Action by the Sheriff's Assignee.—What is admitted on demurrer to declaration.—Intendment that fact occurred before action brought.**—The assignee of a bond given to the sheriff on arrest of *H.* by a Judge's order under Stat. 1 & 2 Vict. c. 110, s. 3, declared in debt against the obligor, reciting that the writ in the present action issued 17th April, 1850, and stating that, to wit on 2nd April, 1849, *H.* had been arrested and was then in the sheriff's custody by virtue of a *capias* theretofore, to wit on the day and year last aforesaid, issued out of the said Court by virtue of a Judge's order theretofore, to wit on 31st March, 1849, made; which writ was directed and delivered to the sheriff, indorsed for bail for 43*l.*, according to the form of the statute. The declaration recited the writ, commanding the sheriff to take *H.*, and keep him till he should have given bail or made deposit in an action of debt at the suit of plaintiff, or should by other lawful means be discharged, and requiring *H.* to put in special bail. The declaration then stated that the sheriff, after the arrest of *H.*, delivered to him a copy of the writ, and, to wit

on the day and year aforesaid, took bail for *H.*'s putting in special bail to the said action. That on that occasion defendant, by bail bond, became bound to the sheriff, under a condition reciting that *H.* was taken, on 2nd April, 1849, by a *capias* bearing date the same day, in an action of debt at plaintiff's suit; and the condition was for *H.*'s putting in special bail. That *H.* did not put in special bail; and the bond became forfeited; and the sheriff afterwards, to wit on 17th April, 1849, assigned it to plaintiff. On special demurrer,

*Held*, by *Patteson* and *Erle*, JJ., that it appeared conclusively against defendant, from the recited condition of the bond, that the Judge's order was made, *H.* arrested, and the bond given and assigned, in an action brought by the present plaintiff against *H.*, and after its commencement.

And, by *Lord Campbell*, C. J., *Wightman* and *Erle*, JJ., that, independently of the condition of the bond, the Judge's jurisdiction sufficiently appeared.

*Held*, also, that it was to be intended that the bond was assigned before this action was commenced; for the declaration showed that it was assigned before the time of declaring, and the Court would therefore intend that it was assigned before the issuing of the writ, unless the contrary appeared, which was not the case here, the same day being named both for the issuing of the writ and for the assignment.—*Barnes v. Keane*, 15 Q. B. 75.

Case cited in the judgment: *Owen v. Waters* 2 M. & W. 91.

## FALSE RETURN.

1. **Estoppel by return.**—If the sheriff return to a *fi. fa.* in an action by *R.* against *W.*, that he has seized goods of *W.* under a *fi. fa.* upon a prior judgment recovered by *L.* against *W.*, and *R.* then brings an action for a false return, and for not seizing the goods under *R.*'s writ, and the sheriff pleads Not Guilty, and other pleas in denial of the seizure of *W.*'s goods under *R.*'s writ, and of there having been goods of *W.* which might have been seized under *R.*'s writ, the sheriff is not estopped from showing, under such pleas, that the goods seized did not in fact belong to *W.*—*Remmett v. Lawrence*, 15 Q. B. 1004.

2. **Seizure under *fi. fa.* on prior judgment.**—Per *Erle*, J., where a declaration by an execution creditor against the sheriff complains that goods of the execution debtor have been seized under plaintiff's *fi. fa.* and a false return made, and the defendant denies such seizure, the defendant supports his issue by proof that, at the time of the seizure, he had in his hands a *fi. fa.* under a prior judgment obtained by another party against the same debtor. For although the sheriff is, in strictness, considered to seize goods under all the writs in his hands at the time, he does not do so in the sense of such a declaration and tra-

verse, which point to a seizure available under plaintiff's writ. *Remmett v. Lawrence*, 15 Q. B. 1,004.

#### ILLEGAL SEIZURE.

*Under fi. fa.*—*Quære*, to what extent a seizure of goods under a *fi. fa.* can be justified, when properly pleaded, where the possession of the goods has been illegally obtained. *Duke of Brunswick v. Slowman*, 8 C. B. 317.

#### INSUFFICIENT LEVY.

*General form of declaration.*—Case against sheriff by execution creditor. The count averred, that there were goods of the debtor within defendant's bailiwick, of which defendant had notice, and might have levied the money. Breach, that defendant would not levy or cause to be made the moneys. Pleas, Not Guilty, and a traverse of the averment that there were goods of which defendant might have levied, &c. Proof, that the sheriff seized goods of the debtor and sold them, but that the sale was improperly conducted, so that he did not make so much as ought to have been made, and plaintiff received less than he otherwise would have done and not enough to satisfy the debt.

*Held*, that this evidence supported the breach, and that it was not necessary that plaintiff, being the execution creditor, should declare more specially. *Mullet v. Challis*, 16 Q. B. 239.

#### JURY ACT.

6 Geo. 4, c. 50.—*Penalties under.*—"Acting under-sheriff."—*Evidence of being.*—A declaration for penalties under the Jury Act, 6 Geo. 4, c. 50, s. 46, described the defendant as "acting under-sheriff," and it was proved that he was the person who in the county performed the duties of under-sheriff; but that T., in London, was nominated under-sheriff pursuant to the 3 & 4 Wm. 4, c. 90, s. 5. On the occasion of receiving official documents from the late under-sheriff, the defendant, at the request of the latter, appended the word "under-sheriff" to his signature, at the same time saying, that he was not under-sheriff, but T. was. The defendant had described himself in an affidavit as "acting under-sheriff." *Held*, that the defendant was not liable to the penalties as under-sheriff, and that the plaintiff was properly nonsuited. *Williams v. Thomas*, 4 Exch. R. 479.

#### OUTER DOOR BROKEN.

1. *Officer's trespass.*—*Co-trespassers.*—*Damages.*—A., a sheriff's officer, to whom a writ of *fi. fa.* was directed, offered, for a pecuniary consideration, to delay its execution for a few days. B., who exercised the office of bailiff to the sheriff, in partnership with A., afterwards illegally executed the writ by breaking open an outer door: and A. subsequently withdrew his men from possession on payment of the amount indorsed on the writ, and of a bonus to himself: *Held*, sufficient to warrant the jury in finding A. to be a co-trespasser, as

having authorised the unlawful act of his partner, B.

In such a case, the damages are peculiarly in the discretion of the jury, and they may include the sum paid for the withdrawal of the execution. *Duke of Brunswick v. Slowman*, 8 C. B. 317.

2. *Trespass by officer to execute a writ of fi. fa.*—*Plea of justification.*—*Replication de injuriâ.*—Where a plea justifies a trespass under a *fi. fa.*, on the ground that the outer door was open at the time of the entry and seizure, that allegation is put in issue by the replication *de injuriâ*. *Duke of Brunswick v. Slowman*, 8 C. B. 317.

#### RETURN TO FI. FA.

*Power of attorney to order sheriff to quit possession.*—To a *testatum fi. fa.*, the sheriff returned that he seized the defendant's goods, and kept possession until he received from "the attorney of the plaintiff" an order to withdraw from possession: *Held*, that the return was good, for the attorney of the plaintiff meant "the attorney in the action," and that he had power to order the sheriff to quit possession. *Levi v. Abbott*, 4 Exch. R. 588.

#### TROVER.

*Right of possession.*—*Interest in chattel.*—*Execution.*—The plaintiffs, brewers in Dublin, supplied a customer in Wales with porter in casks, on the terms that the empty casks were to be returned to Dublin, at his expense and risk, within six months from the date of the contract, or paid for at invoice price, at the option of the shippers: *Held*, that as soon as the casks were empty, the vendee of the porter was a mere bailee of the casks during pleasure, and that the vendors had such an immediate right of possession as entitled them to maintain trover against a sheriff who wrongfully took them in execution. *Manders v. Williams*, 4 Exch. R. 339.

Cases cited in the judgment: *Gordon v. Harper*, 7 T. R. 9; *Bradley v. Copley*, 1 C. B. 683.

#### SEIZURE.

*Two writs.*—*First judgment fraudulent.*—If a sheriff has seized goods at a time when he holds two writs of *fi. fa.* upon judgments at the suit of two different parties, and the plaintiff obtaining the second judgment, brings an action against the sheriff for a false return: *Quære*, whether such plaintiff may, on proof that the first party's judgment was fraudulent, insist that the seizure was under his writ only. *Remmett v. Lawrence*, 15 Q. B. 1,004.

#### WRIT OF INQUIRY.

*Return.*—*When judgment may be signed.*—Under Stat. 3 & 4 Wm. 4, c. 42, s. 15, which provides, that in causes tried before the sheriff, judgment may be signed "at the return of any such writ of inquiry," judgment cannot be signed before the day on which the writ has been made returnable, though it has been actually returned before that day. *Holmes v. London and South Western Railway Company*, 13 Q. B. 211.

## WRONGFUL SEIZURE.

*Goods of third party.—Right of owner.*—If a sheriff wrongfully seizes goods which are afterwards taken from him by another wrongdoer, the owner of the goods may, in an action against the sheriff, recover as special damage the amount necessarily paid to the other wrongdoer, in order to get back the goods. *Keene v. Dilke*, 4 Exch. R. 388.

## PUBLIC COMPANIES.

## BANKING COMPANY.

1. *Stat. 7 & 8 Vict. c. 110, s. 2.*—*What is a company established for a "commercial purpose."*—Registration.—Mandamus to the registrar under Stat. 7 & 8 Vict. c. 110, to register the deed of a joint-stock company, and grant certificate of complete registration. The writ set out the deed, which provided, that it should not authorise or require anything to be done contrary to law; that the company's business should be purchasing land and erecting thereon dwellings to be allotted to the members, and raising a fund out of which sums should be paid to, or applied for the benefit of, the allottees, and raising money for the purposes aforesaid, by selling, &c., interests in, or charges on, the estates to be purchased; that the directors might recommend allotments of land, dividends of profits, and the setting aside money for a reserve fund; that the shareholders, from time to time selected by lot from those to whom no allotment had been made, should receive allotments of the land purchased; that, before a shareholder should receive his allotment, a dwelling should be erected on it, and certain sums laid out in stocking it, by the directors; that the allotment should be charged with a rent-charge for the benefit of the company, at the rate of 5*l.* for every 100*l.* expended by them; that the rent-charges might be retained for the benefit of the company, or sold, &c., as the directors should think fit; and that, when the funds of the company should exceed the amount necessary to provide allotments for all the shareholders, a dividend out of the profits should be declared among the shareholders.

*Return.*—That the company was not a joint-stock company established for any commercial purpose or purpose of profit, within Stat. 7 & 8 Vict. c. 110 (sect. 2); and that it consisted of more than six persons, and was a banking company carrying on business within 65 miles of London; that the shares were of less amount than 100*l.*; and that the company carried on the business of bankers otherwise than by letters patent granted according to Stat. 7 & 8 Vict. c. 113.

On demurrer to the return, *held*,

1. That, as the deed itself did not disclose that the company was a banking company, the latter part of the return showed no legal cause for not registering.

2. But that the company appeared, by the deed, not to be established for any commercial purpose or purpose of profit, within Stat. 7 &

Vict. c. 110, s. 2, and was therefore not entitled to registration. *Regina v. Whitmarsh*, 15 Q. B. 600.

2. *Suggestion on the record of the death of a public officer.*—*A.*, who sued as public officer of a banking company under the Statutes 7 Geo. 4, c. 46, and 7 & 8 Vict. c. 113, died after issue joined. The Nisi Prius record was made up from the plea-roll, as though *A.* was alive. The venire had been awarded accordingly as between *A.* and the defendants, and no entry was made on the plea-roll of the death of *A.*, or of the appointment of another public officer. After the Nisi Prius record was so made up, a memorandum was entered upon it, stating the fact of the death of *A.*, and that *B.*, another public officer of the co-partnership, had been appointed to continue the proceedings; but this was not stated by way of suggestion to the Court, nor was it followed by any statement of confession by the defendants, or a *nient dedire*; and, after such entry had been made, the cause was entered for trial as "*B. v. (the defendants)*," and was tried by the jury returned on the venire in the cause of "*A. v. (the defendants)*." Three of the defendants appeared at the trial, under protest; the fourth had suffered judgment by default; and a verdict was found for the plaintiff.

*Held*, that the entry so made upon the Nisi Prius record, was irregular, and did not authorise the trial in the name of *B.* as plaintiff.

*Quære*, whether a formal suggestion of the death of *A.* would have been traversable. *Barnewall v. Sutherland*, 9 C. B. 380.

3. *Married woman.—Sci. fa.*—A married woman, with the consent of her husband, the defendant, purchased, with the proceeds of her separate estate, shares in a joint-stock banking company, and was registered as owner. Her husband received some dividends, and signed receipts as the agent of his wife; he also attended a meeting of the company, at which none but shareholders were entitled to be present. The company's deed of settlement provided, that the husband of any female shareholder should not be a member in respect of such shares, but should be at liberty to sell them, or at his option to become a member on complying with certain requisitions, which the defendant in this case did not do: *Held*, that the defendant was not a member, for the purposes of execution by *scire facias* on a judgment against the public officer, under the 7 Geo. 4, c. 46, s. 13. *Ness v. Angus*, 3 Exch. R. 805.

4. *Executor of deceased partner.—Liability of for calls.—Extraordinary meeting.—Notice.*—A declaration by the public officer of a joint-stock company against the executrix of a shareholder for calls, stated that, by the deed of settlement, it was provided that the shareholders, while holding shares, should be partners in the company; and that, in addition to 5*l.* required to be paid by each shareholder before the execution of the deed, the directors should have power to call for the further payment by each shareholder, or his executors, of



451. on every share held by him. It then averred, that, after the testator's death, and whilst the defendant was a shareholder as such executrix, the directors made a call. Breach, non-payment by the defendant as such executrix. Pleas, *non est factum*, and a denial that the call was made whilst the defendant was a shareholder as executrix: *Held*, first, that the covenant by the shareholders to pay calls bound their executors, in case a call was made on them, although the covenant did not contain the words "or their executors," and consequently, there was no variance in the statement of the contract; secondly, that the plaintiff was entitled to succeed on the other issue, inasmuch as the defendant was in one sense a shareholder as executrix, notwithstanding the deed provided that no executor should become a shareholder without the consent of the directors, and until he had done certain specified acts, which requisites were not in this case complied with.

The deed of settlement further provided, that the directors should meet weekly, on a day to be named by them, and on such other days as they should think fit; but that the secretary, or any director, might call an extraordinary board, by sending a notice at least one clear day before the time of meeting, and specifying the day and hour fixed for the meeting, and the purpose thereof; and that the business transacted by the directors, being at least five in number, should bind the company. The directors appointed Wednesday as their ordinary day of meeting; and a board having been held on Wednesday, the 7th of March, was adjourned. A letter was afterwards sent to the directors by the secretary, stating that he was directed to inform them that a special board was summoned for Tuesday, the 11th of April, on special business. At this meeting the call in question was made. *Held*, that the call was duly made; for this was not an extraordinary board, and therefore did not require notice of its special purposes.

The statute enabling the company to sue and be sued by their public officer, required a memorial to be enrolled of the names, residences, and descriptions of the shareholders, and declared that, until such memorial was enrolled, no action should be commenced under the authority of that Act. One of the shareholders was described thus:—"A. R., director of the Honourable East India Company, and Major-General in the East India Company's service, shareholder:" *Held*, sufficient, within the meaning of the Act of Parliament, as it corresponded with the register. *Wills v. Murray*, 4 Exch. R. 843.

Cases cited in the judgment: *Hyde v. Skinner*, 2 P. Wms. 196; *Harwood v. Hilliard*, 2 Mod. 268; *Lorant v. Scadding*, 19 Law J., M. C. 5.

5. *Action by, against shareholder*.—7 Geo. 4, c. 46.—"*Shall and may*," meaning of terms.—A company of persons, established for the purpose of carrying on the business of bankers under the provisions of the 7 Geo. 4, c. 46, in

an action against a shareholder for the recovery of a debt, or for enforcing any claim or demand due to the co-partnership, are bound to sue in the name of one of their public officers, and are not at liberty to sue in the names of the covenantees named in the deed of co-partnership. The words in the 9th section of the Act, "*shall and may*," are obligatory, and not merely permissive. *Chapman v. Mikovis*, 5 Exch. R. 61.

6. *Sci. fa.—Execution against husband of shareholder as member for time being*.—7 Geo. 4, c. 46, s. 13.—By a deed of settlement constituting a joint-stock banking company, it was provided, that before the husband of a shareholder became a member of the company, he should take certain steps therein specified. A woman, who was a shareholder of the company before her marriage, continued after her marriage, and without her husband's knowledge, to receive dividends and pay calls in her maiden name upon her shares, which remained registered in that name; and she was so described in the list of shareholders returned to the Stamp Office. Her husband knew that she was a shareholder, but did not take the steps required by the deed of settlement to become a shareholder in respect of her shares, or do any other act respecting them.

*Held*, that execution could not be sued out against the husband upon a *sci. fa.* under the 7 Geo. 4, c. 46, s. 13, as a member for the time being. *Dodgson v. Bell*, 1 L. M. & P. 812.

Case cited in the judgment: *Ness v. Angus*, 5 Exch. R. 805; 6 D. & L. 645.

#### BUILDING SOCIETY.

1. *Action by trustees.—Arbitration under society's rules*.—By a rule of a building society, actions relating to their property were to be brought by the trustees, who were to be indemnified out of the funds; but they were not to commence any action without consent of the directors: *Held*, that, on the trial of an action brought by them, the defendant (though a member of the society), could not allege that they were suing without the requisite consent.

By another rule, disputes between the association and any of its members were to be referred to arbitration, according to Stat. 10 Geo. 3, c. 56 (*Friendly Societies' Act*), s. 27. A member, borrowing the amount of his share from the association, gave the trustees a mortgage of premises held by him on lease, which contained a clause of forfeiture on non-payment of rent; and he covenanted, by the mortgage deed, to pay his dues to the association, and to pay his landlord the rent reserved by his lease: *Held*, that on default by the mortgagor in payment of the society's dues, and also in payment of the rent, the trustees might proceed at law, and were not bound by the arbitration clause. *Doe dem. Morrison v. Glover*, 15 Q. B. 103.

Case cited in the judgment: *Morrison v. Glover*, 4 Exch. 444.

[To be continued.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 26, 1853.

## LAW BILLS BEFORE PARLIAMENT.

### TRIAL BY JURY.

IN the days of Fox and Erskine, the statesman would, indeed, have been bold who ventured to propose that the trial by jury should be dispensed with in civil actions, with or without the consent of the litigants. The question, however, is now *seriously* discussed, and the noble and learned Lord who is placed at the head of the administration of the Law, has taken great pains to make it known that he has pronounced no opinion against giving the option to suitors between trial by a jury and trial by a Judge. All he has ventured yet to state upon the subject is, that the question is one of great delicacy and importance, and that *his mind is not made up upon it.*

As may be supposed, it is not proposed, in the first instance, to shock the prejudices of our fellow-countrymen, by a legal prohibition against trial by jury. We are not yet so advanced in intelligence that it is desirable to declare that the Cadi should not only make the law but determine all the facts. It is only proposed to provide, that in case neither party requires a jury, the Judge shall decide all issues of facts without the intervention of a jury. In this manner we are to be gradually accustomed to see the Judge discharge the functions of a jury, but those who, in the slang of the day, "take their stand upon progress," regard the option to be given as a temporary concession to absurd prejudice, and look forward confidently to the speedy advent of that day when "jury trial," and all such antiquated rubbish, is to share the fate of fines and recoveries and trial by battle!

As our readers are already aware (see *te*, p. 107), the question as to the expediency of substituting a Judge for a jury upon the trial of civil actions, is about to be brought under the consideration of the Legislature in the bill presented by Lord Brougham to the House of Lords shortly after the meeting of Parliament, "for further amending the Law of Evidence and Procedure." The clauses by which this important change is proposed to be introduced in the procedure of the Common Law Courts are as follow :—

"In every civil action or other proceeding which is henceforth either instituted in, or removed into, any of the Superior Courts of Common Law, and is to be tried at Nisi Prius, the Judge at Nisi Prius shall, except as hereinafter excepted, decide the issues of fact without the intervention of a jury; and such decision shall be entered on record, and shall operate in every respect as if it were the finding of a jury at Nisi Prius;" s. 22.

"In every such action or proceeding as is referred to in the last section, either party thereto may insert in the margin of any pleading delivered or filed by him, or if there be no formal pleadings, in the margin of the issue stated by agreement, the words "by jury," and whenever such a memorandum is made by either party, it shall be inserted also in the margin of the Nisi Prius Record, and a jury shall be summoned, and shall try the issues of fact in like manner as before the passing of this Act;" s. 23.

If we inquire the grounds upon which a change so startling is proposed in our legal institutions, we are referred to the experience of the County Courts, which seem destined, for good or evil, to exercise an influence which no one at the period of their establishment could have predicted. Upon every question of legal amendment involving any doubtful element, the supposed experience of the Judges of the County Courts is appealed to, as affording an unerring test of the soundness of the principles upon which they administer justice,

and an unanswerable argument in favour of the adoption of the system of procedure prevailing in those "model" tribunals. The important change introduced in the law of evidence, by the Act 14 & 15 Vict. c. 95, rendering the parties to a suit competent and compellable to give evidence, proceeded altogether upon the allegation that the unrestricted examination of litigant parties worked well in the County Courts. Whatever may be the operation of that Act in the Superior Courts, where witnesses have been previously examined, their evidence contrasted and compared, and their characters investigated and known, the concurring testimony of all disinterested observers is, that in the County Courts, the constancy with which parties contradict each other, upon matters of fact affording no room for mistake, indicates a deplorable disregard for the obligation of an oath, and is well calculated to increase the demoralisation by which it is produced. Be this as it may, it is now proposed to get rid of jury trial in civil actions, upon the assumption that in the extensive range of cases falling within the cognizance of the County Courts—in ninety-seven cases out of a hundred—the parties *elect* to have their causes tried by a Judge alone, and prefer his decision to the verdict of a jury upon contested facts. The Lord Chancellor, though cautiously avoiding any expression that could be construed into an approval of the change proposed, adopted the presumption as admitting of no doubt, that the trial by Judge instead of by jury had been "eminently successful" in the County Courts. The matter is of such great importance that we make no apology for transcribing from the ordinary channels of information all that is reported to have fallen from Lord Cranworth on this subject, which is as follows :—

"It is said that the trial by Judge, instead of by jury, has been eminently successful in the County Courts. Undoubtedly that has been the case; and it has been a matter of inquiry before the Commissioners whether the same principle may not usefully be extended to the cases tried in other Courts: whether you may not give up the machinery of a jury, and leave it to the Judge to decide the question in dispute? I think, in considering such a matter, we ought not to lose sight of this fact—that in sanctioning an arrangement of that sort, we should be taking a step towards unfitting for their duties those who are to send representatives to the other House of Parliament, who are to perform municipal functions in towns, and who are to exercise a variety of those local jurisdictions which constitute in

some sort in this country a system of self-government. It may be very dangerous to withdraw from them that duty of assisting in the administration of Justice. I do not say that I have conclusively made up my mind on the subject, but I must say it is a subject to be approached with very great delicacy and caution. My noble and learned friend (Lord Campbell), who has had the advantage, both as a Judge and as an advocate, of attending in assize towns and of seeing the proceedings in the Courts, cannot, I am sure, have failed to observe, that at the end of the assizes, those who have been summoned as jurors quit the assize hall a much more intelligent set of men than they entered it; and if that be the case, it ought not to be any very trifling advantage that should lead us to abandon such a system. Mechanics schools may afford valuable instruction, but I doubt if there is any school that reads such practical lessons of wisdom, and tends so much to strengthen the mind, as assisting as jurymen in the administration of Justice. I think, therefore, that this is a subject which deserves very serious attention."

Fully concurring in the suggestion that the substitution of a Judge for a jury in the determination of matters of fact is a subject of the greatest delicacy, and requiring the highest degree of caution, with all due deference for the opinion of Lord Cranworth, and a full appreciation of the advantages he possesses in obtaining the materials upon which he founds his opinion from official sources, we venture respectfully to doubt, whether the substitution of a Judge for a jury has been so entirely successful as is assumed? That ninety-seven out of every hundred of the plaintiffs entered in the County Courts are disposed of without the intervention of a jury is granted. But it does not follow that the majority of cases disposed of without a jury would not have been disposed of more to the satisfaction of the litigants if the disputed facts had been determined by a jury, nor does it follow, as assumed, that the parties in all the cases tried by a Judge without a jury did not desire a jury.

Undoubtedly, the County Courts' Act (8 & 9 Vict. c. 95, s. 70), provides, that "in all actions where the amount claimed shall exceed five pounds, it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the cause," and upon the party requiring a jury giving certain notice to the clerk of the Court, and depositing the sum of five shillings for payment of the jury, he may insist upon having five jurymen empanelled and sworn to try the cause. When our readers are reminded, that in nine cases out of every ten

cases brought before the County Courts the suitors are unable or unwilling to employ either counsel or attorney, it is not to be wondered at if in such cases neither party would be willing to incur the expense of a jury. In cases in which the assistance of a jury might be legitimately required, however, it is notorious that suitors in the County Courts are deterred from insisting upon the right to have a jury, by the idea all but universally prevailing, that a jury is regarded by those in authority in the County Courts, as a nuisance and impertinence, and that the summoning of juries is discountenanced as a proceeding attended with great loss of time, and which imposes great additional labour and trouble upon the learned functionary who presides.

So recently as on the last day of Hilary Term, the Court of Queen's Bench made a rule absolute for a mandamus to a County Court Judge.<sup>1</sup> In that case, there had been a trial by the Judge, which proved abortive, and a new trial was ordered, when both the litigants desired that the plaintiff should be tried by a jury; but the Judge thought, that as the intention to summon a jury was not communicated to him upon the application for a new trial, he had authority to prevent the parties from trying before a jury, a construction of the Act of Parliament which was emphatically corrected by the Court of Queen's Bench. The trial of any disputed question before a jury consisting even of five, necessarily occupies a longer time than if the question was to be disposed of by a single Judge, and it compels the Judge not only to take notes of the evidence but to make up his own mind as to the real question at issue, and to submit that question to the jury. An indolent or an unconscientious Judge may, without any clear idea of the merits, decide a cause rightly or wrongly, but the obligation to sum up the facts to a jury, and ask for their opinion, is a salutary check upon a careless Judge, and affords a security to the suitor that the merits of the case have not been wholly overlooked. In dispensing with the machinery of a jury, therefore, we not only interfere with the civil and municipal education of those who discharge the functions of jurymen, as suggested by Lord Cranworth, but the suitor loses the guarantee which trial by jury affords, that the Judge has mastered the material facts of the case, and is competent to submit the question in dis-

pute to those who have also directed their attention to the evidence.

In this, as is in many other instances, where it has been much relied upon, the experience of the Judges of the County Courts is not only inconclusive, but unsafe and dangerous.

It is only due to the learned Lord Chief Justice of the Queen's Bench, who was appealed to in the Lord Chancellor's Speech, to state, that he has unhesitatingly and decidedly declared, both in Parliament and from the Bench, that he is altogether opposed to those who desire to dispense with trial by jury.

## OFFICE OF EXAMINER BILL.

### PARLIAMENTARY DIVISION.

THE consideration in Committee of a bill, prepared and brought into the House of Commons by the Solicitor-General, "to make further provision for the execution of the office of Examiner of the High Court of Chancery," gave rise to a discussion and division upon a matter in which the larger branch of the Legal Profession is especially interested.

The ostensible object of the bill is to provide an altered form of oath for the Examiners, which is alleged to be expedient "by reason of the alterations in the practice of taking the examinations and dispositions of witnesses," established by the Act 15 & 16 Vict. c. 86. The more obvious and important purposes to be effected is, to confine the appointment of Examiners to barristers of seven years standing, and to make *comfortable* arrangements with respect to the salaries and retiring pensions of the fortunate appointees.

Upon the motion of the Solicitor-General, that the 2nd clause, by which it is proposed to provide that, "any person to be hereafter appointed to the office of Examiner of the High Court of Chancery, shall be a practising barrister in some or one of the Courts of Law or Equity, of not less than seven years standing in the Profession," should stand part of the bill, Mr. *Mullings* took the opportunity to protest against this fresh attempt to exclude solicitors and attorneys from offices which they had heretofore filled, and for which they were as likely to be competent as the members of the other branch of the Profession. The Hon. Member for Cirencester desired no favour for that branch of the Profession which on this, as indeed on every other occa-

<sup>1</sup> See *Regina v. The Judge of the Kent County Court*, L. Obs. Reports, p. 283.

sion, he has ably and judiciously represented: all he insisted on was, that the individual entitled to appoint should be at liberty in filling the office of Examiner upon a vacancy, to choose from the whole Profession, and not be fettered in his selection by a statutory qualification which it is at least possible may on some future occasion deprive the public of the servant best fitted to discharge the duties of the office efficiently. This most reasonable proposition, which interfered in no respect with existing arrangements, and protected the public interests, was negatived on a division by a majority of 72 to 30. That the members of the Government should have supported the motion of the Solicitor-General is not, perhaps, to be wondered at, but why independent members, not connected with the ministry, should upon such an occasion vote against a principle enabling the representatives of the Crown to appoint those persons who may be deemed most competent, is not so easily to be accounted for.

We observe by the division list, that the following *lawyers* voted with the Solicitor-General in the majority:—

George Bowyer.	William Laslett.
Rt. Hon. E. Cardwell.	Robert Lowe.
John M. Cobbett.	James Moncrief.
Sir A. Cockburn.	Thomas Phinn.
E. H. J. Crawford.	John Stapleton.
Rich. B. Crowder.	Rt. Hon. S. H. Walpole.
Samuel Gregson.	

Mr. Mullings was supported by the votes of the following lawyers:—

W. Hodgson Barrow.	Edward Grogan.
Isaac Butt.	P. M'Mahon.
Wm. R. Fitzgerald.	R. Murrough.

Other and early opportunities will arise for the assertion of the principle for the present unsuccessfully contended for, and we trust that no such opportunity will be allowed to pass over, without taking the sense of the House upon it. The public interest is identified in this matter with justice to the attorneys and solicitors, and not only members of Parliament, but those who make members, cannot fail in time to understand the true bearings of the question.

#### OATHS IN CHANCERY BILL.

THE 2nd section of this Bill, which authorises the Lord Chancellor to appoint persons practising as solicitors to administer oaths in Chancery, limits the London

appointments to 10 miles from Lincoln's Inn Hall. Now, difficulties may frequently arise in ascertaining the precise boundary of such jurisdiction, and where the oath was administered beyond the 10 miles it would be a nullity. Before the abolition of the office of Masters in Chancery it was essential that their jurisdiction should not be interfered with, and the powers of the Masters Extraordinary originally limited to 20 miles from London, was by Lord Brougham's orders of 21st December, 1833, section 33, extended to places distant not less than 10 miles from Lincoln's Inn Hall.

There is now no reason for limiting within any specific distance the power to administer oaths by such persons as the Lord Chancellor may think proper to appoint. Indeed it may happen that the oath of an aged or infirm person may be required to be taken at a place just beyond the 10 miles from Lincoln's Inn, but considerably distant from the residence of a country practitioner, and thus occasion unnecessary expense and delay, especially as many London solicitors have their country-houses several miles from town, though they attend their offices daily.

By the 6 & 7 Vict. c. 82, the Lord Chancellor possesses the same powers for granting *commissions* for taking affidavits in Scotland and Ireland as in England. The Judges also of each of the Common Law Courts grant *commissions* to attorneys and to the Judges' clerks to administer oaths in their Courts. And in order to make the designation of the officer uniform in all the Courts, the solicitors to be appointed under the new Act should be called "Commissioners to administer Oaths in Chancery," instead of "Country agents" and "London agents," and such designation will be applicable to them whether in the country or in London, Ireland or Scotland.

It is also suggested that the 5th section may extend to other purposes as well as the registration of deeds and wills, and to the Isle of Man as well as the Channel Islands.

#### LORD ST. LEONARDS' BANKRUPTCY BILL.

THIS Bill, which was introduced on the 10th inst., comprises the following provisions:—

1. On vacancy in Office of Commissioner, the Lord Chancellor may declare that the same shall not be then filled up; and upon any new appointment the Lord Chancellor may require

the person appointed on such vacancy to act in aid of other Commissioners.

2. Registrars may be removed by her Majesty upon certificate of the Lords Justices.

3. Salaries of officers to commence from appointment.

4. Official assignee to be paid according to recited scale, subject to variation to be made by the Lord Chancellor with advice of Lords Justices.

5. Per-centage received by clerks of County Courts to be paid over to the Consolidated Fund; per-centage not to be payable in future out of insolvents' estates administered in County or Insolvent Courts.

6. Commissioners may rescind, vary, &c. rules and orders.

7. Trader signing after summons, an admission of part of a debt, and not paying such part within a certain time, an act of bankruptcy.

8. Excepted articles to be allowed to a bankrupt.

9. The broker shall make an inventory and valuation of the remainder of the bankrupt's household furniture, &c., which shall not be sold without the order of a Commissioner.

10. If the bankrupt shall be entitled to any allowance, his household furniture, &c., if unsold to be taken in lieu of money.

11. Refusal or suspension of certificate to be in the discretion of the Court.

12. Certificate not to specify cause of bankruptcy, or be distinguished by *classes*, but Commissioner may certify his approbation of bankrupt's conduct.

13. Petition not to be annulled by consent, till after the second sitting.

The following are the provisions relating to *deceased traders*, or what have been familiarly called the "*Dead men's clauses*:"—

14. Creditors of deceased traders may petition the Court of Bankruptcy for distribution of the estate of the deceased.

15. Proceedings on such a petition, and adjudications thereon if no cause shown by executors.

16. What shall be required by executors, &c., showing cause against adjudication.

17. Executors or administrators of deceased trader may petition for adjudication.

18. *No adjudication to be made where proceedings have been taken for administration in equity.*

19. Court may issue warrant to secure the property of the deceased in certain cases.

20. Before adjudication, Court may summon witnesses to give evidence of trading, &c.

21. Certain provisions applicable to petitions for adjudication of bankruptcy to apply to petitions under this Act.

22. If adjudication not made within three months, petition to be dismissed.

23. Notice of adjudication and of sittings for proof of debts.

24. Effect of the adjudication and proceedings thereon.

25. Priority of funeral and testamentary expenses preserved.

26. Certain savings of rights of executors.

27. Savings applicable to the cases where there is no proof of act of bankruptcy within three months before the trader's decease, &c.

28. Savings for *bona fide* acts done in due course of administration before the filing of the petition for adjudication, or notice of the intention to file it; creditors paid in full before filing of petition to refund rateably in case of deficiency of assets.

29. Adjudication to be a bar to proceedings at Law or in Equity.

30. Surplus after payment of debts in full, with interest, to be paid to executors, administrators, or assigns of the deceased.

31. Fees and payments on administration of deceased traders' estates.

Then a new power is given to the Lord Chancellor to appoint the Bankruptcy Commissioners and Registrars to act as Officers of the Court of Chancery.

32. Power to Lord Chancellor to appoint Commissioners, &c., of Court of Bankruptcy in the country to be Officers of the Court of Chancery.

38. Lord Chancellor, &c., to make general rules for enabling the Court of Chancery to send inquiries to Commissioners in Bankruptcy, and for taking evidence, administering oaths, &c.

34. Under orders of reference the Commissioners to have same powers, &c., as Masters in Chancery formerly had; but result to be stated in a short certificate, and not in a formal report.

35. Rules of the Court of Chancery to prevail on examination of witnesses.

36. Persons summoned as witnesses bound to attend.

37. Penalties for perjury.

38. Lord Chancellor, &c., to make rules for carrying Act into execution.

39. *Solicitors not to be retained by other solicitors.*

This clause recites sect. 247 of "The Bankrupt Law Consolidation Act, 1849," by which every such solicitor as therein mentioned may appear and plead in any proceedings in the Court of Bankruptcy without being required to employ counsel; and then enacts that, the expression "a solicitor of the Court of Bankruptcy, in the recited enactment, shall be deemed to mean a solicitor of the Court of Bankruptcy acting generally in the case or matter, and not a solicitor retained as an advocate by such first-mentioned solicitor; and it shall not be lawful for an attorney or solicitor so retained as aforesaid, to appear and plead in any proceeding whatever in the Court of Bankruptcy or before any officer of the said

Court, whether in London or elsewhere, and whether under this Act or any other Statute or otherwise; and after the first appointment subsequently to the choice of assignees no solicitor shall be removed or changed, except by order of the Court made upon motion."

### REPEAL OF CERTIFICATE DUTY.

THE motion for leave to bring in this Bill is fixed for *Thursday*, the 10th of *March*. It does not appear that an interview has yet been had with the Chancellor of the Exchequer, but an appointment is daily expected. As the financial budget will not be made till after the Easter recess, there is ample time to bring all the points of the case before the Government, so that it cannot be said that the Chancellor of the Exchequer has formed his plan without due information of the grounds of this professional claim to relief.

In the meanwhile, the solicitors throughout the country should lose no time in communicating with their several representatives, and be prepared with petitions to the House for the day of the debate.

The following is the substance of the Petition of the Attorneys practising at Quarter Sessions in the County of Kerry in Ireland. It states,

That the annual tax levied from the Profession, of which the Petitioners are members, was in its origin oppressive, and in its continuance unjust.

That none of the other learned Professions are subject to such a tax, although none of them contribute so largely as that of the attorneys to the public revenue.

That barristers are not taxed, whilst they enjoy advantages vastly superior to those extended to attorneys. As a Profession, the members of the Bar are the recipients of nearly the entire of the patronage connected with the administration of justice in these countries and in the colonies.

That the recent alterations in the Law have aggravated the burden of this tax, and strengthened the grounds upon which its abrogation has been and continues to be sought.

The Petitioners therefore hope that the House will do justice in the premises by abolishing this tax.

### FORM OF PETITION OF THE INCORPORATED LAW SOCIETY.

*To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.*

The Humble Petition of the undersigned Attorneys and Solicitors practising in —

Sheweth,—That the taxes to which your petitioners are subjected are,—1st, a stamp of 120*l.* upon the articles of clerkship; 2nd, a tax

of 25*l.* upon admission; and 3rd, the tax from which your petitioners seek to be relieved, namely, 12*l.* for a certificate if practising in London, Edinburgh, or Dublin, and 8*l.* if practising in any other part of the United Kingdom. This treble taxation amounts in the whole to upwards of 200,000*l. per annum.*

That no other profession or trade is burdened with a treble tax, and your petitioners submit that they ought to be relieved from the third of the three personal taxes,—the more especially as the other two taxes produce annually upwards of 84,000*l.* That the exclusive right to practise is held equally by the other branch of the Legal Profession, and by the practitioners in physic, and yet they are not taxed so highly on entering the Profession, nor are they taxed at all for carrying it on.

Your Petitioners therefore humbly pray that your Honourable House will be pleased to relieve them and the rest of the Attorneys, Solicitors, Proctors, and Notaries, from the payment of the Annual Duty on Certificates.

### REMOVAL OF THE COURTS.

#### PETITION OF THE INCORPORATED LAW SOCIETY.

*To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.*

The humble Petition of the Society of Attorneys, Solicitors, Proctors, and others practising in the Courts of Law and Equity of the United Kingdom, Incorporated by Charter of King William the Fourth and Queen Victoria.

Sheweth,

That the Court-rooms of the Superior Courts of Law and Equity, adjoining Westminster Hall, are inconvenient in situation, defective in construction, and insufficient for the due administration of justice.

That the Chambers of the Members of the Bar, of the great proportion of London attorneys, and of the agents of the country attorneys, are situate in or near the Inns of Court.

That in that neighbourhood also are the Chambers of the Judges and the Masters, both in Equity and Common Law, the Accountant-General, the Registrars and all the other Law and Equity Officers.

That the Court-rooms at Westminster are a mile and a half distant from the centre of law business, the daily resort of professional men, as well as of a large part of the public.

That during half the legal year the practitioners are carried by the business and locality of the Courts, into a quarter of the town with which (except the very few engaged in Parliamentary business) they have nothing to do, traversing each time, and not unfrequently more than once a day, a distance of three miles from the offices, where the documents and papers of their clients are deposited.

That they are detained there often day after

day to the interruption of their own professional duties, and to the great inconvenience of others, who require their attendance elsewhere.

That in numerous instances daily appointments before the Common Law Judges at Chambers, and before the Masters and Registrars in Chancery, and other engagements of an urgent nature are rendered ineffectual through the absence of professional men, who, at the very moment, are probably waiting, unoccupied, at Westminster.

That the aggregate of expense and loss arising in various ways from these hindrances in the way of justice, and of the general business of the law, would show, that the erection of new Courts in what may properly be termed the Law District, would be a measure of public economy, besides being calculated to lead to increased facilities and expedition in the practice of the Courts, far beyond what can be hoped for under existing circumstances.

That the Equity Judges recently appointed have no adequate Courts at Westminster.

That instead of two Courts, which were formerly deemed sufficient, there must now be six, including the Courts of the Lords Justices and Vice-Chancellors.

That, according to the evidence before the Committee of the House of Commons, in 1845, no sufficient space can be found adjoining Westminster Hall for such new Courts even if the erection of Courts there were desirable, without interfering with and materially prejudicing the designs for the New Houses of Parliament.

That the internal arrangements of the Common Law Courts, more especially of the Queen's Bench, do not afford to the suitors and their witnesses sufficient space;—to the attorneys, convenient access to counsel;—or to the public, that accommodation which it is essential to the administration of justice they should possess.

That the Common Pleas has no suitable Court for the trial of causes during Term.

That the Practice Court of the Queen's Bench and the Inner Court of Exchequer are used for trials at Nisi Prius, but are much too small, and are, when crowded, in a very unwholesome state.

That the Courts are deficient in all accessory rooms for counsel and their clients.

That consultations involving important interests are frequently held in the passages and avenues of the Courts; in the Robing Room; or a room in which there are three or four consultations going on at the same time and often the consultations of adverse parties.

That the only places of waiting for jurymen, witnesses, and parties in attendance, are the Great Hall, and the passages of the Courts. That attorneys are obliged to hire rooms for their witnesses at the neighbouring coffee-houses: otherwise at all seasons they have to walk about the hall, without a seat and without the means of refreshment.

That the attorneys have no room to which they can retire to prepare any document requisite at the moment or to answer letters.

That formerly there was a coffee-house adjoining Westminster Hall, which in some measure answered the purpose, but it was destroyed at the fire of the Houses of Parliament.

That the deficiencies of the Courts of Westminster Hall, the want of more extended accommodation, and the impossibility of obtaining any additional space of ground, together with the inconveniences attending that site, have suggested the construction of new Courts and offices, and that they should be in the neighbourhood of the Inns of Court,—the whole united under one roof, combining in the same building, accommodation for the whole of the officers, both of the Court of Chancery and of the Common Law Courts, and greatly facilitating the transaction of business.

That the evidence before the Select Committees of your Honourable House in 1840 and 1845, show the inconvenience of the present Courts and the necessity of new ones, more in number and more commodious, and the impossibility of re-constructing the present Courts at Westminster.

The evidence also proves that there is no site in juxta-position with Westminster Hall for the erection of new Courts, whilst the present site might be usefully appropriated in connexion with the Houses of Parliament.

That the proposed site in the centre of the metropolis is conveniently situated between the Temple and Lincoln's Inn,—having the Strand on the south, Carey Street on the north, Chancery Lane on the east, and Clement's Inn and New Inn on the west, on the borders of the cities of Westminster and London.

That the clearance of the lanes and alleys within that area, would be of vast advantage to and greatly improve the neighbourhood.

That the centre of the proposed quadrangle would be occupied with the new Courts and offices—the Strand and part of Fleet Street would be widened to 100 feet; Carey Street to 60 feet; and uniting with the intended new street into the city of London from the Record Office now in course of erection on the Rolls' Estate in Chancery Lane.

That building leases might be granted for chambers on the east and west sides of the Courts, the ground-rents of which would defray nearly one-half the price of the whole ground.

That the rents of the present offices of all the Courts which it is proposed should be brought under the roof of the new Courts, would be available also to a large extent, in reduction of the purchase of the site.

That the number of the registrars and their clerks, including those of the Accountant-General, being largely increased of late years, proportionate accommodation for the despatch of their important functions is required,—all of which might be advantageously provided for in the proposed building.

That in the Act recently passed for abolishing the Masters' Offices in Chancery, the Lord Chancellor is empowered to cause a set of chambers in Lincoln's Inn to be taken for each



of the four Judges for carrying on the Chamber business, until Courts with proper rooms attached can be provided for them; and the expense of these several sets of chambers might be saved by including them in the new building. And that in fact the business at the Chambers of the Equity Judges under the recent Statutes, cannot be satisfactorily conducted whilst the Judges sit at Westminster.

The following estimate of the expense of the proposed measure is submitted to the consideration of your honourable House:—

Cost of the site, about 700 feet by 480 feet, or  $7\frac{1}{2}$  acres . . . £675,074

Estimate of the proposed Courts combined with the Common Law and Equity Offices, now scattered in various localities . . . £300,000

To which add for approaches, foundations, sewerage, warming and ventilating, fire-proofing, gas, and water services, fittings, fixtures, furniture, and decorations, &c. . . 180,000

Contingent and incidental charges . . . 42,000

522,000

Gross cost of site and building . 1,197,074

Deduct for the value of ground - rents for chambers to be erected on portions of the proposed site, not immediately required for the new Courts and Offices, to be leased for 75 years, with power reserved for repurchasing or occupying the chambers as offices attached to the Courts, if required . £316,500

And for the amount to be realised by the sale of the various offices of the Masters, Record and Writ Clerks, Registrars, Accountant-General, &c. . . 60,000

376,500

820,574

From this sum may ultimately be deducted the value of the rent which will be saved for the offices of the Taxing Masters and the Lunacy Masters . . . £24,000

Also the saving of rent for the offices of all the Common Law Courts, estimated at not less in value than . 25,000

To which add the value of the present site of the Courts at Westminster . 86,000

And the value of the Rolls offices . . . £12,000

Making the sum of . . . £147,000

Leaving the ultimate cost of the site and building amounting to . 673,574

That in order to provide for this outlay, your Petitioners beg leave to suggest that such portions thereof as your Honourable House may deem proper should be paid out of the following funds:—

1. The accumulation of surplus interest arising from Stock purchased with the Suitors' money, not directed to be invested, (and to which interest they have no legal claim,) amounting to 1,241,188*l.* Stock.

2. The sum of 201,028*l.* Stock, the accumulated surplus of the Suitors' Fee Fund since 1833, after paying all the charges thereon.

3. The surplus fees paid into the Treasury to the Consolidated Fund since the 1st January, 1838, under the 1 Vict. c. 30, amounting to nearly half-a-million, and though out of those receipts the pensions and compensations allowed to the holders of abolished offices have been paid, it is submitted that pensions or compensations granted on effecting alterations in the law for the benefit of the community at large, should be paid out of the Consolidated Fund, and not by the Suitors of the Courts.

Your Petitioners therefore humbly pray that your Honourable House will take this very important subject into your early consideration, with a view to the adoption of such measures for the erection of new buildings for the accommodation of the Judges, the Bar, the Solicitors and Suitors, and generally for the more convenient administration of justice, as to your Honourable House may seem meet, and your Petitioners will ever pray, &c. L. S.

## UNITED LAW CLERKS' SOCIETY.

### RECENT DONATIONS.

AN advertisement in our last Number contained a List of further Donations to the United Law Clerks' Society, and amongst them appeared a munificent one of 50*l.*, from Mr. Lewis of Raymond Buildings. We gladly insert a copy of Mr. Lewis' letter, showing the high opinion he entertains of the utility of the Society, and we may add, that these acts of benevolence should not pass unrecorded, when we recollect how illiberally and unfairly the members of the Profession have too often been treated. The Committee have had numerous instances of consideration and kindness under their notice, but have rarely an opportunity to make them known.

The following is the letter:—

"6, Raymond Buildings,  
Gray's Inn,  
8th December, 1852.

"DEAR SIR,—Observing your name as one of the Trustees of the United Law Clerks' Society, I take the liberty of forwarding to you my cheque for 50*l.*, as a Donation to that Institution.

"It is proper to add, that this is a part of a sum received as compensation for serious injuries sustained by Mrs. Lewis and myself, by the collision on the Brighton Railway, on the 1st ultimo, which we are desirous of appropriating to charitable purposes, and I know no charity more deserving of support from the Profession of which I am a member, than the "United Law Clerks' Society," which I trust will long continue to prosper.

"Believe me to be,

"Dear sir,

"Yours faithfully,

"And very obediently,

(Signed)

"WM. LEWIS.

"John Wm. Willcock, Esq., Q.C."

#### MANCHESTER LAW ASSOCIATION.

THE Annual General Meeting of the members of the Association was held on Wednesday, the 12th day of January, 1853, at their rooms, No. 4, Norfolk Street, when an account of the receipts and disbursements (previously audited by two of the members) was submitted and passed.

The proceedings of the Society, for the last year, were stated in the following Report which was read by the Honorary Secretary, and unanimously adopted:—

"The Committee of the Manchester Law Association, in presenting the following Report of their proceedings during the past year, have to call the attention of the members of the Association to the very important changes in the Law which have taken place.

"Early in the late Session of Parliament your Committee received copies of various Bills, including particularly the Common Law Procedure Amendment Bill, the Sutors in Chancery Relief Bill, the Law of Wills' Amendment Bill, the County Courts' Further Extension Bill, and the Law of Patents' Amendment Bill, all of which have since become Law, and occasioned alterations in the practice and procedure of the several Courts of Law and Equity, greater than any which have taken place in modern times.

"Your Committee suggested various amendments to render the working of the Bills, when carried into Law, practically more efficient.

"The Law of Wills' Amendment Act will, it is believed, give great security to persons deriving benefits from testamentary dispositions of property, and guard against the mischievous consequences of certain decisions by the

Ecclesiastical Courts, the effect of which have been to deprive many persons of their rights.

"The Law of Patents' Amendment Bill will, it is believed, be found entitled to the general approbation of the Profession.

"Your Committee again supported the attempt made to obtain a repeal of the Certificate Duty, which they at one time hoped would have taken place during the last Session, but the determination of her Majesty's Ministers, as subsequently expressed, not to propose any alteration in the fiscal system of the country, prevented the accomplishment of that object.

"Your Committee have to thank Lord Robert Grosvenor for the interest he has taken in the subject, and to notice the great efforts constantly made by the Council of the Incorporated Law Society, and by the Metropolitan and Provincial Law Association, but are sorry that they have not received that support from some of the members of Parliament for this locality which the justice of the case demands.

"Your Committee have further to report that having heard that an uncertificated attorney in Manchester, had given notice of his intention to apply for a renewal of his certificate; they felt it their duty to send to the Secretary of the Incorporated Law Society affidavits which had the effect of preventing the intended application being made.

"Your Committee have also had charges against persons under the name of agents, practising as attorneys and conveyancers; some of which charges have been under the consideration of your Committee, and will form a subject of consideration for their successors in office.

"Your Committee were, in August last, invited by the secretary to the five County Court Judges, appointed to frame a scale of costs, to be received by attorneys, under the powers of the Act passed during the last Session of Parliament, to offer suggestions on that subject; they took the same into consideration, and communicated with Law Societies in other towns; and one of your Committee subsequently attended in London as a deputation, and met deputations from various other Law Societies, when a scale of costs was unanimously agreed upon; and at an interview which, on that occasion, took place with the Judges, this scale was submitted, and, as your Committee believes, met with their general approbation.

"The attention of your Committee has been directed to the various and conflicting constructions which have been recently put upon the last Stamp Act by the Commissioners of Inland Revenue and their solicitor, in cases of conveyance on the sale of hereditaments for a pecuniary consideration and a perpetual rent reserved or limited to the vendor; several members of the Association have felt much inconvenience in consequence of the very novel and opposite decisions recently adopted at the Stamp Office; and inasmuch as the gentlemen at the head of that department of the Revenue,

state that they keep no record of their decisions, and as no certainty therefore exists, that their decision in one case will operate as a rule in another in which the facts may be precisely analogous, your Committee undertook to pay the expenses, out of pocket, of an appeal to the Court of Exchequer in a case recently brought before them, considering that it is a question of great practical importance in Manchester and the neighbourhood, and that a decision upon it ought at once to be obtained. In the case referred to, the conveyance was in consideration of a gross sum of 100*l.* paid, and of a rent of 80*l.* per annum limited to the vendor in fee; it was stamped with a 10*s.* stamp, being the *ad valorem* duty on the gross sum paid, and with the proper progressive duty stamps. On its being presented at the Stamp Office, along with a duplicate to have the usual denoting stamp affixed to the latter, the solicitor of the Commissioners objected that the original required a 1*l.* 15*s.* stamp in addition to the *ad valorem* stamp. The deed was then submitted to the Commissioners for their opinion as to the proper stamp duty, under the 14th section of the Act 13 and 14 Vict. c. 97. The Commissioners took a new view of the question, stating that as the deed contained a covenant for the payment of the 80*l.* rent it was liable to a 2*l.* stamp, under the head of covenant in the above Act, being the same duty as on a bond for the payment of any annuity or money as stated periods (not being interest nor rent on a lease) for the term of life or other indefinite period. Against this opinion it was determined to appeal, and the Commissioners were therefore applied to, to state a case for the opinion of the Court of Exchequer; under the 15th section of the Act; such application was accordingly made in the middle of September last, and after pressing repeatedly for the case, the applicants, on the 5th of November, received a communication from the solicitor of Inland Revenue that the amount of duty involved being so very trifling, and the point one of not much importance and by no means clear, he should recommend to the Board that the duty in dispute, with the costs deposited, should be returned without putting the applicants to the expense of going to the court. On this being communicated to the Committee, they passed a resolution requesting the applicants to urge upon the solicitor of Inland Revenue the great importance in this district of the question involved, and the desirableness of having it determined by a positive decision. On again applying to the office accordingly, it was stated that the Commissioners decided that the deed was rightly stamped, and any litigation on the subject was therefore out of the question, and the deed was subsequently returned (stamped as when sent up) with the adjudication stamp of the Commissioners affixed, declaring it to be rightly stamped.

"Your Committee have to report that they received a circular signed by Lord Harrowby, as chairman of the Committee of the Society for Promoting the Amendment of the Law, in-

viting the attendance of a deputation from this Association at a Conference, proposed to be held in London, on the 15th, 16th, and 17th of November last, to consider the Amendment and Consolidation of Commercial Law, and its assimilation in England, Scotland, and Ireland; and your Committee appointed the President of the Association, who accordingly attended as a deputation at that Conference, which was also attended by several gentlemen, representing Legal and Commercial Associations of most of the commercial towns in Great Britain and Ireland, and by several members of both Houses of Parliament.

"The understanding of all parties taking any active interest in the measure, appeared to be that a full inquiry should be instituted into the commercial laws of each country, and an impartial selection taken from those which should be considered the best to be generally adopted, and that when such selection should be made, the sanction of the Legislature should be obtained, so that a uniform law should govern all the commercial affairs of the United Kingdom. A deputation from the Conference had a long and satisfactory interview with the Earl of Derby (then the first Minister of the Crown), and your Committee believe that the objects of the Society will in the result be carried out.

"Your Committee cannot, without entering much into detail, give a report of all matters which have engaged their attention during the year in which the affairs of the Association have been confided to their care, but the members will be able to form an opinion of the labours of the Committee, from the great and important changes in the law which have been effected during their year of office. It has been the anxious desire of your Committee, by a careful perusal of the various bills submitted to Parliament affecting the law, to render them of advantage to the public. Great as have been the changes during the last few years, it is clear that greater alterations are contemplated; and your Committee rely with confidence on their successors to suggest improvements, and by an earnest endeavour to promote practical usefulness in the administration of justice, render the Association an important auxiliary in effecting wise and comprehensive measures of Legal Reform.

"Since the foregoing part of this report was prepared, the resignation of two of the chief officers of the Association has been received, namely, that of Mr. Whitlow, who has acted as treasurer since the formation of the Association; and that of Mr. Street, who has acted as honorary secretary for the last four years.

"Your Committee deeply regret that Mr. Whitlow has been compelled, from indisposition, to retire from the office of treasurer; and that the Association will be deprived of the valuable services of Mr. Street, as honorary secretary, who has resigned in consequence of other engagements which have devolved upon him, and which, in his opinion, are not compatible with an efficient discharge of the duties incident to the office.

"Your Committee are happy to announce that they have prevailed upon Mr. Street to accept the office of treasurer, and that Mr. Charles Gibson has very kindly consented to accept the important office of honorary secretary for the ensuing year."

The following gentlemen were elected the officers and Committee of the Society for the ensuing year:—

*President*—Mr. John Barlow.

*Vice-Presidents*—Mr. G. B. Withington, Manchester; Mr. W. D. Nicholl, Altrincham.

*Treasurer*—Mr. James Street.

*Honorary Secretary*—Mr. Charles Gibson.

*Committee*—Mr. J. P. Aston, Mr. T. Baker, Mr. James Barratt, Mr. J. F. Beaver, Mr. T. P. Bunting, Mr. William Burdett, Mr. H. Charlewood, Mr. R. B. B. Cobbett, Mr. E. C. Faulkner, Mr. Samuel Fletcher, Mr. Wolley Foster, Mr. Wm. Foyster, Mr. James Gill, Mr. George Hadfield, jun., Mr. Isaac Hall, Mr. Stephen Heelis, Mr. Wm. Heron, Mr. Jos. Janion, Mr. Thomas Neild, Mr. William Norris, Mr. W. H. Partington, Mr. Fras. Robinson, Mr. John Speakman, Mr. John Sudlow, Mr. Thos. Taylor, (Norfolk-street,) Mr. Fred. Thomas, Mr. J. B. Vickers, Mr. W. L. Welsh, Mr. R. M. Whitlow, and Mr. John Wilson.

*Chairman of the Committee*—Mr. W. L. Welsh.

*Vice-Chairman*—Mr. Francis Robinson.

## PROFESSIONAL LISTS.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 21st Jan., to 18th February, 1853, both inclusive, with dates when gazetted.

Bullivant, George Haslehurst, and John Warin Willders, 2, Old Bailey, London and Whittlesey, in the Isle of Ely, Attorneys and Solicitors. Feb. 15.

Coppard, Thomas, and John Turner Rawlinson, Horsham, Attorneys and Solicitors. Feb. 11.

Gem, Roger Williams, jun., and William Docker, Birmingham, Attorneys and Solicitors. Jan. 28.

Hollingsworth, Nathaniel, Charles Rich Tyerman, and John Johnston, 24, Gresham

Street, City, Attorneys and Solicitors, (so far as regards the said John Johnston.) Jan. 28.

Humfrys, William, and Joseph Robinson, Hereford, Solicitors. Feb. 11.

Richardson, Henry Marriott, and George Marsland, Bolton-le-Moors, Attorneys, Solicitors, and Conveyancers. Feb. 8.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with dates when gazetted.*

Edwards, Thomas Gold, Denbigh, in and for the County of Denbigh, also in and for the County of Flint. Jan. 25.

Prall, Richard, Rochester, in and for the County of Kent. Jan. 28.

## NOTES OF THE WEEK.

### GENERAL REGISTER OF DEEDS.

THE Lord Chancellor's Bill for establishing a General Register of Deeds in London, has been printed. It is for the most part in the same form as the last Bill after it left the Select Committee of the Lords and went through a Committee of the House. We shall call early attention to its principal provisions.

### REGISTRATION OF TITLES.

Mr. Henry Drummond's Bill for Registering Titles and facilitating the Transfer of Land, has also been printed, but contains little or no improvement on the plan of its predecessor.

### LAW APPOINTMENT.

The Copyhold Commissioners having, on the 3rd February, 1853, appointed *Nathan Wetherell, Esq.*, Barrister-at Law, to be an Assistant Commissioner under the Copyhold Acts; the said Nathan Wetherell did, on the 16th February, 1853, make a declaration before Sir Thomas Noon Talfourd, Knight, one of the Judges of her Majesty's Court of Common Pleas, for the due execution of his duties under the said Acts.—From the *London Gazette* of 18th February.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

Feb. 16.—*Attorney-General v. Sheffield Gas Consumers' Company*—Bill and information dismissed, without costs.

— 16, 19.—*In re Fussell*—Part heard.

### Lords Justices.

*Ex parte Hakewell*. Feb. 21, 1853.

MARRIED WOMAN.—PETITION IN FORMA PAUPERIS.—FOR ACCESS TO HER CHILDREN.

*Application granted for leave to a married woman to present a petition under 2 & 3 Vict. c. 54. for access to her infant children, in forma pauperis, without a next friend, where she was living separate from her husband, and the 11. stamp on the petition was dispensed with, upon the usual affidavit.*

THIS was an application by the direction of Vice Chancellor *Kindersley*, for an order to enable Mrs. Hakewell, who was living apart from

her husband, and was refused access to her children, to present a petition in her own name without the intervention of a next friend, for the custody of such of her children as was under seven years of age, in pursuance of the 2 & 3 Vict. c. 54. It appeared she was unable to obtain any person to act as her next friend.

*C. M. Roupell* in support, cited *Wellesley v. Wellesley*, 16 Sim. 1; and also asked that the 11. stamp on the petition might be dispensed with, upon the usual affidavit as to the destitute condition of the petitioner.

The Lords Justices made the order as asked.

Feb. 16, 17.—*South Yorkshire Railway and River Dun Company v. Great Northern Railway Company*—Appeal dismissed from Vice-Chancellor Stuart.

— 18.—*In re Oldfield ex parte Oldfield*—Adjudication annulled.

— 18.—*In re Campbell*—Appeal from the Master of the Rolls dismissed with costs.

— 22.—*Rodgers v. Nowill and others*—Order for committal for breach of injunction.

— 22.—*Anwyl v. Owens*—Interim injunction to restrain sale and cutting of timber.

### Master of the Rolls.

*Pemberton v. Read*. Feb. 19, 1853.

FORECLOSURE CLAIM.—WHERE JUDGMENT CREDITOR ASSIGNED BEFORE FILING.—DISMISSAL.

*A judgment creditor, who was made a defendant to a foreclosure claim on behalf of mortgagees, had assigned his interest in such debt before it was filed, but it appeared that the judgment remained still entered in his name under the 1 & 2 Vict. c. 110: Held, that the claim could not at present be dismissed with costs against him, and the usual foreclosure order was made.*

In this claim on behalf of the mortgagees against a mortgagor and certain judgment creditors, for a foreclosure or sale, it appeared that William Bloom, one of the creditors, had, prior to its being filed, made an absolute assignment of his judgment debt and interest. He now disclaimed and sought to have the claim dismissed as against him, with costs to be paid by the plaintiffs to be added to the amount of their debt. It appeared, however, that the judgment still remained entered in his name under the 1 & 2 Vict. c. 110.

*Bates* for the plaintiffs; *S. F. Bilton* for the defendants.

The Master of the Rolls said, that as the legal right still remained in the defendant in trust for his assignee under the deed, he could not properly be dismissed at present, and the usual foreclosure order was therefore made.

*Goddard v. Lethbridge*. Feb. 19, 1853.

USURY.—WHERE MONEY LENT ON BOND AT 5 PER CENT.—WITH UNDERTAKING TO REPLACE STOCK.

*A testator borrowed a sum of 6,000*l.* at 5*l.* per*

*cent. interest secured by his bond, but it appeared he had also written to the lender undertaking to replace the stock which had been sold out for his accommodation: Held, that this was not a usurious contract, as the lender had only the option of having the stock replaced, or of having the 6,000*l.* and interest.*

*Roupell and Pigott* appeared for the trustees and executors of the will of the late Sir T. Lethbridge, in reference to a loan of 6,000*l.* to him at 5*l.* per cent. interest, and which was secured by his bond. It also appeared that he had written a letter to the lender, undertaking to replace the 3 per cent. stock, which had been sold out by her for his accommodation. It was submitted whether this amounted to a usurious contract. *Barnard v. Young*, 17 Ves. 44, was cited.

The Master of the Rolls, without calling on the other side, said, that as the lender had an option which she would take, the 6,000*l.* or the stock, and she could not sue for the former if the latter were replaced, and this Court would also restrain her from so doing, it was not a case of usury.

Feb. 16.—*Attorney-General v. Heygate and others*—Bill dismissed without costs.

— 18.—*Clark v. Tipping*—Part heard.

— 19.—*Wallace v. Anderson*—Order on claim for inquiry as to sums applied by trustees for maintenance of infant.

— 21.—*Hewison v. Negus*—*Cur. ad vult.*

— 22.—*Anwyl v. Owens*—Injunction refused.

— 22.—*Collard v. Sampson*—Order confirming Master's report.

### Vice-Chancellor Kindersley.

*Ex parte Cautley*. Jan. 14, 29, 1853.

WILL.—CONSTRUCTION.—BEQUEST OF SECURITIES FOR MONEY.—LEGAL ESTATE.

*Held, that where a testator, having money secured on mortgage, bequeaths the money so secured, the legal estate does not pass, secus where the securities for the money are bequeathed.*

The testator, R. Baskett, by his will gave and bequeathed to George Maddison and John Foster, their executors, administrators, or assigns, all his household furniture, plate, china, and books, and all his money in the funds and on securities, and all other his moneys, goods, chattels, and personal estate whatsoever and wheresoever. A question arose, whether the legal estate in certain mortgaged premises passed under this devise to the executors.

*Haynes* in support of the petition.

*Cur. ad vult.*

The Vice-Chancellor said, the rule was, that if a testator, having money secured on mortgage, bequeathed the money so secured, the legal estate did not pass, but that if he bequeathed the securities for the money it did, and that in the present case the legal estate did not therefore pass to the executors.

Feb. 16.—*Alexander v. Pennell*—Injunction refused to restrain action at law.

— 18.—*In re Bridger's Trust*—Order as to appointment of guardian to infants.

— 19.—*Upton v. Foster*—Petition for appointment of guardian to infants, stand over for hearing at Chambers.

— 19.—*Drew v. Long*—Motion for decree under 15 and 16 Vict. c. 86, s. 15, to be set down in its turn as a cause.

— 22.—*In re Randall's Trust*—Stand over.

### Vice-Chancellor Stuart.

*King v. Isaacson.* Feb. 21, 1853.

WILL.—CONSTRUCTION.—VESTED OR CONTINGENT INTEREST.

*The testator by his will gave the income of his real and personal estate, after the death of his widow, to his two nieces, and after the decease of either or both of them, he directed two-third parts to be divided among the child and children of his elder niece as and when they should severally and respectively attain 21, as tenants in common, their executors, administrators, and assigns; and if there should be but one child, then to such one child; and there was a similar disposition as to the remaining third to the children of the other niece. This niece survived the testator, and died leaving three children, two of whom died under 21: Held, that the children took vested interests on their respectively coming into esse, and not contingent on their attaining 21.*

THE testator, Walter Norton, who died in 1837, by his will, dated in July, 1823, directed his trustees to pay the income of the residue of his real and personal estate, after the death of his widow to his two nieces, in the proportions, as to the former, of two-thirds, and as to the latter, of the remaining one-third, and after the death of either or both of his nieces to convey, pay, assign, transfer, and make over, two equal third-parts or shares of his residuary real and personal estate unto and among all and every he children of his elder niece as and when they should severally and respectively attain their several and respective age and ages of 21 years, to and for their own absolute use and benefit as tenants in common, and not as joint tenants, and their several and respective heirs, executors, administrators, and assigns, but if there should be but one child of such niece, then to such only child, his or her heirs, executors, administrators, and assigns. There was a similar disposition as to the remaining one-third to the children of his other niece, who died in May, 1844, having married the defendant, James King, in 1832, and left three children, two of whom died under 21, and the third was the plaintiff. The question arose, whether the two children took vested interests, or only contingent on their attaining 21.

*Walker and G. M. Giffard* for the plaintiff; *Hett and Rosseter* for the heir-at-law; *Rus-*

*sell and Altmatt* for the father, who had taken out letters of administration to the deceased children, were not called on.

*Selwyn, Borton, and Alderson*, for other parties.

The Vice-Chancellor said, that the children took vested interests in the residuary estate on their respectively coming into esse.

Feb. 16, 17, 18.—*Robinson v. Briggs*—Order for re-conveyance and delivery up of title deeds.

— 16.—*Phelps v. Norris*—Order on claim for account.

— 18.—*In re Overhill's Trust*—Judgment on construction of will.

— 22.—*Lodge v. Prichard*—Order for account to be taken at Chambers.

— 22.—*Howell v. Williams*—Order as to mode of taking evidence.

### Vice-Chancellor Wood.

*In re Jackson's Trusts.* Feb. 18, 1853.

TRUSTEES' ACT, 1850.—NEW TRUSTEES.—VESTING ORDER.

*The trustees of certain property had, upon the death of their testator, purchased out of the trust moneys the share of his son-in-law in certain property which had been jointly purchased. Upon their death, an order was made under the 13 & 14 Vict. c. 60, for the appointment of new trustees, and for such purchased property to stand as a security for the trust moneys.*

Pearson appeared in support of this application for an order under the 13 & 14 Vict. c. 60, for the appointment of new trustees, and to vest the trust property in them. It appeared that the testator, by his will, dated in 1825, vested the whole of his property, consisting of freeholds, leaseholds for lives and for years, and personal estate, in two trustees, and that they had upon his death purchased for 900*l.*, out of the trust moneys, the share of his son-in-law in certain property which had been bought jointly. The original trustees were dead.

The Vice-Chancellor made an order for the appointment of the trustees, and for the property to stand a security for the 900*l.* to the estate.

*In re Caddick's Estate.* Feb. 18, 1853.

CONVEYANCE.—PRACTICE.

*After the approval by counsel of a draft conveyance, an order was made for its engrossment, and an affidavit was produced of such engrossment being an exact copy of the draft. The order for completion was thereupon made and directed to be recited in the blank left in the draft and engrossment, and for the payment out of Court of the purchase-money on an affidavit verifying its execution by all the proper parties.*

In this case, which related to the investment under the 8 Vict. c. 18, of moneys paid into

Court for the purchase of an estate (reported *ante*, pp. 18, 36), the draft conveyance had been approved by counsel and an order made for its engrossment and an affidavit produced of such engrossment being an exact copy of the draft. An application was now made for an order to convey and for payment of the purchase-money out of Court.

*Milman*, in support, said, there was a blank in the draft and engrossment for the insertion of the date of the order.

The *Vice-Chancellor* said, the order for the completion would now be made and recited in the blank left, and upon the execution by all proper parties to be verified by affidavit, the purchase-money would be paid out of Court.

Feb. 16.—*Taylor v. Taylor*—Judgment on further directions.

— 16.—*Bague v. Dumerque*—Annuity held liable to abate.

— 16.—*Blythe v. Carpenter*—Exceptions overruled to Master's report.

— 18.—*In re Harden Wesleyan Methodist Chapel*—Order for appointment of new trustees.

— 19.—*In re Ten Bells Club*—Petition dismissed without costs to wind up association.

— 19.—*Orlebar v. Nicholay*—Hearing adjourned to Chambers.

— 19, 21.—*Gridlestone v. Creed*—Moneys collected by testatrix and invested in savings' bank held to form part of her personal estate, although alleged to be collected to build a church.

— 21.—*Hicks v. Sallit*—Decree for conveyance of land to plaintiff.

— 22.—*Flavel v. Harrison*—Injunction refused.

#### Court of Queen's Bench.

*Regina v. Wilson*. Jan. 27, 1853.

INDICTMENT.—PROSECUTOR'S COSTS WHERE REMOVED BY CERTIORARI.

*The city solicitor, by the direction of the Lord Mayor, before whom a charge against the defendant for an assault was in the first instance investigated, conducted the prosecution of such defendant and obtained his conviction on his removing the indictment into this Court by certiorari: Held, discharging a side-bar rule for the taxation of the prosecutor's costs, that the provisions of the 5, & 6 W. & M. c. 11, s. 3, did not apply, inasmuch as the costs would not fall on the Lord Mayor, but be paid out of the corporation funds.*

THIS was a rule nisi obtained on Jan. 12 last, to set aside a side-bar rule for the taxation of the prosecutor's costs on an indictment for an assault of which the defendant had been convicted after removal by certiorari into this Court. The indictment had been conducted by the city solicitor by the direction of the Lord Mayor, before whom the offence charged was in the first instance investigated. By the 5 & 6 W. & M. c. 11, s. 3, it is enacted, that if

a defendant prosecuted a writ of certiorari, the Court, upon conviction, "shall give reasonable costs to the prosecutor, if he be the party grieved or injured, or be a justice of the peace, mayor," &c., "or any other civil officer, who shall prosecute upon the account of any fact committed or done, that concerned him or them as officer or officers, to prosecute or present."

*Hugh Hill* showed cause against the rule, citing *Regina v. —*, 15 Q. B. 1,060.

The Court, without calling on Sir F. Thesiger in support, said, that the object of the Statute was only to indemnify the prosecutor for costs, which he must himself pay if not paid by the defendant, and as in the present case they would not fall on the prosecutor, but be paid out of the corporation funds, the Act did not apply, and the rule must be made absolute to rescind the side-bar rule.

#### Court of Common Pleas.

*Rowe v. Tipper*. Jan. 27, 1853.

BILL OF EXCHANGE.—INDORSER AND HOLDER AGAINST PRIOR INDORSER.—NOTICE OF DISHONOUR.

*The holder of a bill of exchange which fell due on a Saturday gave notice to his indorser of dishonour on the Monday, but such indorser neglected to give due notice to his indorser, and the plaintiff accordingly on the Tuesday did so: Held, in an action on such bill by the plaintiff against such first indorser, that the notice of dishonour was insufficient, and the defendant entitled to a verdict,—the holder of a bill being unable to avail himself of the laches of his indorser to give notice of dishonour, but being restricted to his day in which to give such notice.*

A RULE nisi had been obtained on Nov. 23 last to set aside a verdict for the defendant and enter it for the plaintiff in this action, which was on a bill of exchange by indorsee against a prior indorser. The defendant pleaded want of due notice of dishonour, and on the trial before Cresswell, J., it appeared that the bill fell due on Saturday, Nov. 15, and was dishonoured, and that the plaintiff gave notice thereof to his indorser, who omitted to give notice to the defendant, and the plaintiff on the 18th gave such notice. The jury found for the defendant by direction of the learned Judge on this plea.

*Macnamara* showed cause against the rule, citing *Dobree v. Eastwood*, 3 Car. & P. 250.

*Hawkins and Duncan* in support.

The Court said, the rule was, that if the holder sought to avail himself of his own notice to a remote indorser, he must give him notice within the same time as he was required to give notice to his own immediate indorser, and that he could not avail himself of the laches of any indorser to whom he had given notice to enlarge his time. The rule was therefore discharged.

## Court of Exchequer.

*Tanner v. Woolmer and others.* Jan. 21; Feb. 12, 1853.

ABORTIVE RAILWAY COMPANY.—ACTION ON INDEMNITY BY PROVISIONAL COMMITTEE-MAN.—EXPENSES OF WINDING UP.

*A provisional committee-man paid a sum of 225*l.* on his co-committee-men indemnifying him against all further liability in respect of any claims on the company, and from all costs, charges, and expenses in regard to the same, as set forth in the two schedules attached thereto. Held, discharging a rule to set aside a nonsuit in an action to recover back the amount of a call made on the plaintiff by the Master on the company being wound up, that such indemnity did not extend to such expenses, although if the possibility of the provisions of the Acts being applied to the company, the plaintiff would without doubt have obtained an indemnity against the same.*

THIS was an action by a member of the provisional committee of the Direct Exeter, Plymouth, and Devonport Railway Company, against two other members of the committee, to recover the sum of 496*l.* on their guarantee to indemnify him, upon paying 225*l.*, from further liability in respect of any claims upon the company, and from all costs, charges, and ex-

penses in regard to the same. The company proved abortive, and had been wound up under the winding up Acts, and the plaintiff had been called on for payment of his share of the expenses thereby incurred as a contributory, and he now brought this action to recover the amount so paid. The defendants paid 100*l.* into Court. On the trial before *Martin, B.*, at the sitting after Hilary Term last, the plaintiff was nonsuited on the ground the agreement did not extend to the expenses consequent on the company being wound up, but merely against the existing debts and claims on the directors as set forth in the two schedules attached thereto. This rule had been, therefore, obtained on Nov. 24 last, to set aside the nonsuit and enter the verdict for the amount claimed, on the ground of misdirection.

*Crowder and Butt* showed cause against the rule, which was supported by *Barstow*.

*Cur. ad vult.*

The Court said, that the covenant of indemnity applied only to the expenses incidental to the company, and had no reference to the proceedings under the winding up Acts; and although there was no doubt if the plaintiff had contemplated the possibility of the provisions of those Acts being applied to the company, he would have required and obtained an indemnity in respect of such expenses, as he had not done this the rule must be discharged.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## PUBLIC COMPANIES.

[Continued from p. 328.]

## BUILDING SOCIETY.

2. *Usury.*—Question for jury.—By the rules of an association established under the Building Societies' Act, 6 & 7 Wm. 4, c. 32, it was provided that the funds of the society should from time to time be put up for sale, the highest bidder to be the purchaser, and to receive shares at the rate of his bidding. Shares were paid for by monthly subscription. The nominal value of the shares was 120*l.* When the actual value reached that amount by the payments made, all arrears of subscription, &c., to be called in, the 120*l.* per share to be paid, and the society dissolved. In the meantime, any member desirous of receiving the actual value of his share or shares by way of loan might obtain it on mortgage of buildings, paying then 4*s.* per share monthly, beyond his subscription, for redemption money or interest. The directors were empowered to borrow money for the purpose of making advances on shares. By the declared practice of the society, members who do not wish to take loans might allow their monthly payments to accumulate at compound interest till the society dissolved; and there were in fact capitalists who so placed their money without any view to borrowing for building purposes or otherwise.

*Held*, that the rules and practice of this as-

sociation did not contravene Stat. 6 & 7 Wm. 4, c. 32, or deprive the society of the protection against the usury laws given by sect. 2, and thereby render it an illegal association if the loan produced more than 5*l.* per cent. annually.

Whether the regulations of such a society were a mere colour for usury would be a question for a jury, looking to the regulations themselves and the other evidence. *Doe dem. Morrison v. Glover*, 15 Q. B. 103.

3. *May lend money.*—Member may hold more than one share of 150*l.*—A building society may lend money to one of its own members on mortgage, and the security will, under the 10 Geo. 4, c. 56, s. 21, vest in the treasurer or trustees, for the time being.

A member of a building society may hold one or more shares exceeding 150*l.* in value. *Morrison v. Glover*, 4 Exch. R. 430.

## CANAL AND WATERWORKS COMPANY.

1. *User of, and right to, the soil.*—*Duchy of Lancaster.*—Power of Crown to grant away lands.—Evidence of sale.—B. was empowered by Acts of Parliament to make a canal; and he was authorised thereby to supply the canal from brooks within 500 yards thereof, to dig and trench the adjacent land, and remove earth, trees, and other obstructions thereon, for making, using, and maintaining the canal and towing paths, and making, &c., trenches and watercourses, with similar power as to



roads and other conveniences connected with the canal; to inclose and appropriate such parts of the lands as should be proper for wharfs or quays; to set up, &c., posts, ditches, and fences, in places necessary for separating the towing paths from the adjacent lands; to lay earth and other materials requisite for the works; and do and perform all things necessary for the making, maintaining, and convenient use of the canal. It was provided, that nothing should authorise *B.* to use the lands for any other purpose than that of the navigation. Provisions were made for the purchase and sale of such lands as should be wanted, for assessing the price and the damages to be paid by *B.* for the use of or injury to the lands; and, if he should be in possession of any lands for a certain space of time without using them for the canal, he was to re-convey his right and interest therein; and it was provided that the works and things made in forming a certain part of the canal should become the property of *B.*

*Held*, that no right to the soil of the lands, adjoining to the canal, and applied to the purposes thereof under the powers of the Act (not being those comprehended under the last-mentioned proviso, passed to *B.* where there had been no actual purchase.

Certain of the said adjoining lands were the property of the Crown, in right of the Duchy of Lancaster; and such lands cannot be parted with by the Crown, except under certain statutory regulations imposed by 1 Stat. 1 Ann. c. 7, s. 5. The canal Acts in question are later. The clauses authorising the user of the lands, and providing for compensation for such user, mentioned the Crown, either expressly or by direct reference: the clauses confined to authorising the purchase and providing for the assessment of the price mentioned only bodies politic, corporate, &c., parties having especial interest as guardians, trustees, executors, &c., and "all and every other person and persons whomsoever." Contracts of purchase were to be enrolled with the clerk of the peace. On payment or tender of the purchase money, the lands purchased were to vest in *B.* *Held*, that the Crown had no power to convey lands under these clauses; and that, supposing such power to exist, no purchase could be inferred from the exercise by *B.* of the powers of entry and user given by the Act, especially as no evidence of an enrolment was produced.

Conceded that, upon the above construction of the statute, there could be no adverse possession by *B.* using the Crown land under the powers given by the Acts:

And, therefore, that *B.* having within the time of limitation begun to occupy part of the Crown lands for purposes not connected with the canal, ejectment lay, on the demise of a lessee of the Crown, for lands so occupied, whether they had or had not been also used for the purposes of the canal under the statutory powers. But that possession was not to be given to the lessor of the plaintiff in such a manner as to interfere with *B.*'s easement.

*Doe dem. Regina v. Archbishop of York*, 14 Q. B. 81.

2. *Dispute between proprietors and persons authorised under local act to use the water.—Jurisdiction of the Court, and of Commissioners for settling disputes.—Recovery for Acts tending to establish an adverse right.*—Stat. 34 G. 3, c. 78, empowered a company to purchase lands for making and maintaining a navigable canal, and contained provisions with respect to the conveyance of land, and its vesting in the company on payment of the price assessed by compensation juries. It was also provided by the same Act (explained by Stat. 46 G. 3, c. xx., s. 23), that manufacturers within a certain distance of the canal might, after notice to the proprietors of the canal, lay down pipes to supply their steam-engines with water for the sole purpose of condensing the steam used for working such engines; and that, if any dispute should arise with any person desirous of taking water for the above purpose, or who should be in the use of taking the same, such dispute should be finally determined by certain commissioners.

A declaration in case by the company stated that the canal had been made and maintained by them in pursuance of the Act; that defendants, having steam-engines within the prescribed distance of the canal had, after notice to the company, laid down pipes communicating with the canal, and that defendants had used the water drawn off by such pipes for other purposes than condensing the steam of their engines.

It was objected in arrest of judgment, and afterwards on writ of error, that the declaration did not show any conveyance or ownership of the canal or water; nor did it show any invasion of a private right, or damage to such a right, inasmuch as the Act complained of, if wrongful, was clearly prohibited by statute, so that a repetition of the Act could never be used as evidence that it was rightful; also that the remedy was by indictment as for the violation of a statutory provision; and, further, that the complaint was a dispute over which the commissioners under the Act had exclusive jurisdiction. *Held*, by Exch. Ch., affirming the judgment of Q. B.:

That the declaration was good; that it must be taken that the company was in possession of the canal; and that, without averment of special damage, the wrongful act appeared to be a damage to the company's right; that the disputes over which the commissioners had jurisdiction were disputes with persons, either about to use or in the actual use of the canal water for a rightful purpose, as to the mode of taking such water, and that the provision for reference to the Commissioners did not apply to a mere wrongful act.

*Held* also, per *Erle, J.*, that even if such an act were within that provision, the Superior Courts had concurrent jurisdiction. *Rochdale Canal Company v. King*, 14 Q. B. 123; *King v. Rochdale Canal Company*, ib. 136.

Case cited in the judgment: *Ashby v. White*, 2 Ld. Raym. 938.

3. *Recovery of compensation and costs under Lands' Clauses' Act.*—In an action for the recovery of compensation awarded and the costs under the 8 & 9 Vict. c. 18, the declaration stated that the umpire was required by the plaintiff to settle and determine the costs to be paid to him under that Act: *Held*, on special demurrer, that the averment amounted to a statement that the umpire was required to adjudicate upon the costs, and was sufficient. *Gould v. Staffordshire Potteries Waterworks Company*, 5 Exch. R. 214.

4. *Lands' Clauses' Act.*—*Award.*—*Costs.*—*Time within which to be made.*—Under the 34th section of the Lands' Clauses' Consolidation Act, 8 & 9 Vict. c. 18, which provides that all the costs of arbitration on the amount of compensation to be given for lands required to be taken by a public company are to be settled by the arbitrators, such costs need not be incorporated in the award, but may be ascertained at a subsequent time by the persons who made the award.

Such adjudication of the costs need not be within three months after the time of the reference.

The term "the arbitrators" in that section may mean either the arbitrators or the umpire, according as the compensation shall have been determined by the arbitrators or umpire. *Gould v. Staffordshire Potteries Waterworks Company*, 5 Exch. R. 214.

5. *Contract under seal defeated by statutory enactment.*—By an Act of 12 Geo. 3, c. lxxv., a company was incorporated by the name of the Company of Proprietors of the Chester Canal Navigation, for making a canal from Chester to Middlewich; by another Act of the 33 Geo. 3, c. xci., another company was incorporated by the name of the Company of Proprietors of the Ellesmere Canal, to make a canal from Shrewsbury to the river Mersey, at Netherpool, in Cheshire. By another Act of the 44 Geo. 3, c. liv. (1804), the Ellesmere Canal Company was empowered to take from the river Dee, at Llandisilio, in Denbighshire, a supply of water for their canal, and were also empowered to take water from Bala Lake, for supplying the river Dee with as much water as they should take from it for their canal, or more; and for that purpose to make cuts from the Lake to communicate with the river Dee, at and with such embankments, trenches, and other works as might be necessary for the purpose. In 1807 the Ellesmere Canal Company, by deed, covenanted with Sir W. W. Wynn, Bart., who was then seised in fee of Bala Lake, that they would not at any time thereafter draw off from the said Lake water for the purpose of their said canal, to a lower level than the mark on a certain standard to be erected near the Bala Lake, indicating the mean summer level of the waters of the said Lake, nor would at any time embark or impound up the said water more than one foot above such level. In 1813 the Chester Canal Company and the Ellesmere Canal Company were, by statute (53 Geo. 3, c. lxxx.), united into one

company by the name of the United Company of Proprietors of the Ellesmere and Chester Canals. By the 7 & 8 Geo. 4, c. cii., all the four previous Acts were repealed, and the proprietors of the two companies were reunited into a new company, entitled the United Company of Proprietors of the Ellesmere and Chester Canals, for (*inter alia*) maintaining the former canals then already completed, and making certain new cuts; and it was thereby enacted, that all contracts, covenants, and agreements entered into by virtue of the powers contained in the several repealed Acts should remain in force, as if the same had been made under the powers contained in that Act: and the company were authorised to construct such or so many weirs, embankments, and other works, at or near to Bala Lake, and to do and execute all such things as should be necessary for ponding up, &c., and drawing off the water in and from the said pool, so as to be thereby enabled at all times to replace in or restore to the river Dee an equal or greater quantity of water than should or might be taken therefrom by the said united company, by means of the works at Llandisilio, for the purpose of supplying the canal therewith. By 9 & 10 Vict. c. cccxxii., it was enacted, that the company should thenceforth be called by the name of the Shropshire Union Railways and Canal Company, and that all persons should have the same rights and remedies against the Shropshire Union Railways and Canal Company, which, before the passing of that act, they had against the United Company of Proprietors of the Ellesmere and Chester Canal:—*Held*, in an action by the devisee of Sir W. W. Wynn against the last-mentioned company for the breach of the above covenant, by impounding the water of Bala Lake to a height of more than one foot above the mark on the standard, whereby its waters overflowed and damaged the plaintiff's lands, that the covenant was repealed by the 7 & 8 Geo. 4, c. cii., as to all acts done *bona fide* by the company, under its provisions, for the purpose of restoring to the river Dee a quantity of water equal to what they should abstract for the use of the canal by means of the works at Llandisilio. *Wynn v. Shropshire Union Railways and Canal Co.* 5 Exch. R. 420.

#### FRIENDLY SOCIETY.

1. *Stat.* 10 G. 4, c. 56, s. 29.—*Distress warrant issued without summoning the plaintiff.*—Plaintiff, the steward of a friendly society, not having paid money in obedience to an order of two justices under Stat. 10 G. 4, c. 56, s. 29, the justices, without further summons, issued a distress warrant, under which plaintiff's goods were seized.

*Held*, in an action of trespass, that the seizure was not justified by the statute. *Hammond v. Bendyshe*, 13 Q. B. 869.

Case cited in the judgment: *Painter v. Liverpool Gas Company*, 3 A. & E. 433.

2. *Jurisdiction of county justices over society in borough.*—It was deposed that the

society was formed within the borough of Leeds, which is within the West Riding of Yorkshire, but has a Court of Quarter Sessions, and justices with exclusive jurisdiction; that all the meetings were held, and all the business transacted, and the award made, within the borough; but that *J.* resided, and the act with which he was charged took place, in the West Riding, without the borough.

*Held*, that the justices of the West Riding had jurisdiction to hear *J.*'s complaint and make the order. *Regina v. Grant*, 14 Q. B. 43.

3. *Altered rules.*—*Abandonment of old rules.*

—The rules of a friendly society, established in 1817, were duly made and confirmed at Quarter Sessions under Stat. 33 Geo. 3, c. 54. Afterwards some new rules were made; but they were neither made nor confirmed in the manner required by sect. 3 of the statute. One of such new rules altered the amount of entrance money, and another the amount of weekly allowance to sick members. A sick member, who had entered the society since the making of the new rules, and had occasionally received relief under them, summoned the stewards to petty sessions for non-payment of a weekly allowance under the new rules. The justices dismissed the complaint on the ground that the old rules had been abandoned, and that the new rules were void, and that the society, therefore, was no longer within the statute so as to give the justices jurisdiction.

*Held*, that the new rules being void, the old rules were not affected by them, and that the justices had jurisdiction to order payment of a weekly allowance under the old rules; and this, though the specific claim made by the summons was under the new rules; and the Court made a rule absolute, under Stat. 11 & 12 Vict. c. 44, s. 5, requiring them to hear and determine the case. *Regina v. Cotton*, 15 Q. B. 569.

4. *Expelling member.*—*Reference of differences to arbitration.*—*When award a nullity.*—By the rules of a friendly society any member rendered by illness incapable of working was to receive, as long as he continued unable to work, a weekly allowance, and was not allowed to do any kind of work except receiving or paying money, giving verbal orders, or signing his name; any member attempting to defraud the society was to be excluded: all matters in dispute between the society and any individual member were to be referred to arbitration; the arbitrators were to hear evidence on both sides, and their decision was to bind all parties and be final.

Justices, under Stat. 4 & 5 W. 4, c. 40, s. 7, made an order, finding that it was proved before them, on oath, that *J.* had been a member for 18 months; that, by the rules, disputes were to be referred as above; that, for nine calendar months, *J.* was by illness rendered incapable of working, and received a weekly allowance, till the society refused to pay him, and expelled him; that a dispute thereon arose, which was referred to arbitrators in pursuance of the rules; that the arbitrators had been called on by *J.* to hear evidence on

both sides, and to make their award, but had wholly neglected and refused to make such award; that *J.* complained to a justice, and obtained a summons against the president, who, with *J.*, appeared before the justices making the order; and the justices by the order found the allegations to be true, and ordered *J.* to be reinstated in the society.

The order was brought up by *certiorari*, and motion was made to quash it, on affidavit that the parties had met before the arbitrators, when evidence was given on the part of the society, and *J.*, being called upon for his defence, said that the evidence was true, adding that he had witnesses as to his character (which was not in dispute), and no other witnesses: whereupon the arbitrators awarded that *J.* should be expelled; and that these facts had been proved before the justices.

In answer, it was sworn that *J.* had been charged with an act amounting to working while receiving the allowance; that he had, at the meeting before the arbitrators, tendered evidence material to the merits of the case; but that the arbitrators had refused to hear it, and had decided *ex parte* on the evidence given for the society; and that *J.* had not stated as alleged in the affidavit on the other side.

*Held*, that the finding by the justices of the arbitrators having neglected to award was not conclusive, that being a fact preliminary to the jurisdiction of the justices; but that, there being contradictory evidence before the justices on the question whether the arbitrators had refused to hear evidence on behalf of *J.*, the justices were warranted in considering the refusal proved; and, if they did so consider, in finding that there was no award according to the rules of the society; and therefore that their order was not made without jurisdiction, and was good. *Regina v. Grant*, 14 Q. B. 43.

Cases cited in the judgment: *Regina v. Bolton*, 1 Q. B. 66; *Welch v. Nash*, 8 East, 394.

JOINT STOCK COMPANY.

1. *Liability of shareholders.*—*When limited to common property.*—*Policy of insurance.*—A policy of insurance under the common seal of a joint-stock company contained the following proviso:—"That the said policy, or anything therein contained, shall in no case extend, or be deemed or construed to extend, to charge or render liable the respective proprietors of the said company, or any of them," &c., "to any claim or demand whatsoever in respect of the said policy or of the assurance thereby made, beyond the amount of their, his, or her individual shares or share in the capital stock of the said company; but that the capital stock and funds of the said company shall alone be charged and liable to answer all claims and demands by virtue of the said assurance, or incident thereto." *Held*,

That the terms of the policy precluded the assured from any remedy at law against individual shareholders; and, consequently, that, after using due diligence to obtain satisfaction of a judgment recovered against the company

in an action on such policy, by execution against their property, he was not entitled to issue execution against an individual shareholder under sects. 66 and 68 of Stat. 7 & 8 Vict. c. 110. *Halket v. Merchant Traders Insurance Company*, 13 Q. B. 960.

2. *Liability of trading company on contract not under seal.*—Assumpsit by a corporation on a contract for the supply of iron rails to defendant, averring mutual promises. Plea, non assumpsit.

On the trial, the plaintiffs proved the making of the contract in fact, defendant proved a charter incorporating plaintiffs for the purpose of trading in copper ore, but containing nothing as to the trading in iron. No other charter was proved. There was no evidence that the contract proved was in any way ancillary to the trade in copper.

*Held*, that the contract, not being under seal, and not being for the trading purpose for which the plaintiffs were incorporated, did not bind plaintiffs, and that defendant was entitled to the verdict on the plea of non assumpsit, as there was no consideration for his promise.

*Quere*, whether, if the contract had been under seal, it would have bound plaintiffs, not being a contract for the purpose for which they were incorporated? *Copper Mining Company v. Fox*, 16 Q. B. 229.

3. *Powers of a board, under company's deed of settlement.*—Power to indemnify, compromise, &c. on behalf of company.—The deed of a joint-stock banking company contained provisions that the directors should be not fewer than five nor more than seven: that three or more should constitute a board, and be competent to transact all ordinary business; and that the directors should have power to compromise debts, &c. Agents might be appointed by the directors to draw and accept bills, &c., without reference to the directors. The number of directors became less than five: four directors, being the whole number then existing, executed a deed compromising a large debt due to the bank, taking from the debtor a mining concern, and covenanting with him on behalf of the company to indemnify him against certain bills of exchange. In an action of covenant by the debtor for not indemnifying him:

*Held*, that such covenant did not bind the company; for that this was not ordinary business, and no smaller number than five directors were competent under the deed to transact it.

*Quere*, whether a board of three directors could transact even ordinary business, unless it was a board of three out of five directors? *Kirk v. Bell*, 16 Q. B. 290.

4. *Sci. fa. against shareholder.*—Concurrent remedies under Stat. 7 & 8 Vict. c. 110, ss. 66, 68.—*Sci. fa.* by a judgment creditor of a joint-stock company, completely registered under Stat. 7 & 8 Vict. c. 110, to obtain execution against a shareholder, reciting that due diligence had been used to obtain satisfaction from the company. Plea 1: that due diligence had not been used: verification. Replication: that due diligence had been used: conclusion to

the country. Demurrer, assigning as causes, that the replication should have shown how diligence was used, and should have concluded with a verification, and was too general.

*Held*, that the replication was sufficient.

Plea 2. That the writ was sued out without leave of the Court. Demurrer.

*Held*, that the plea, alleging merely an irregularity, which would have been ground for an application to the Court, was bad.

*Held*, also, that the proceeding by *sci. fa.* was proper, as Stat. 7 & 8 Vict. c. 110, s. 66, impliedly gives that remedy to a judgment creditor; and that the summary remedy, expressly given by section 68, was in addition to, and not substituted for the former. *Marson v. Lund*, 16 Q. B. 344.

5. *Evidence of registration, under Stat. 7 & 8 Vict. c. 110.*—Effect of erasure in deed of settlement.—In an action of debt for calls by a company formed under Stat. 7 & 8 Vict. c. 110: pleas, *nunquam indebitatus*, and that the company was not completely registered: issues thereon: it is not indispensable that the plaintiffs should produce their certificate of registration, but the registering may be proved *aliunde*; the certificate itself not being in issue.

If, in such an action, the company's deed of settlement be produced in evidence to prove the defendant a shareholder, and therefore liable under sect. 55 of the Act, the deed is available for this purpose, though it appear that, since execution, the name of a shareholder, subscribed before that of the defendant, has been erased, and the erasure be not accounted for. *Agricultural Cattle Insurance Company v. Fitzgerald*, 16 Q. B. 432.

6. *Effect of certificate of complete registration under 7 & 8 Vict. c. 110, s. 7.*—Discretion of registrar.—A certificate of complete registration granted by the registrar of joint-stock companies, pursuant to the 7 & 8 Vict. c. 110, s. 7, incorporates the company, according to s. 25, notwithstanding the deeds omit some of the provisions required by schedule (A.) to be inserted therein. At all events, it is not competent to a shareholder, in answer to an action for a call, to object that such certificate has been granted upon the production of an insufficient deed.

*Quere*, whether the judgment of the registrar, in granting or withholding a certificate, is subject to review? *Banwen Iron Company v. Barnett*, 8 C. B. 406.

7. *Liability for goods supplied to and used by them in their business.*—Evidence of authority in officers to contract.—In an action brought against a joint-stock company, completely registered under the 7 & 8 Vict. c. 110, for goods ordered by persons in their employ, and supplied for the purposes of the company, and used by them in their works,—it is not necessary for the plaintiff to prove that the persons who gave the orders were authorised by the directors so to do, or that the contract was made pursuant to the provisions of the company's deed of settlement and by-laws. *Smith v. Hull Glass Company*, 8 C. B. 668.

8. *Authority of directors to accept bills of exchange.*—*Construction of company's deed of settlement.*—By the deed of settlement of a joint-stock company, completely registered under the 7 & 8 Vict. c. 110, it was, amongst other things, provided that it should not be lawful for the directors to contract any debts, in conducting the affairs of the company, beyond the sum of 100*l.* at any one time, except in the case of the purchase-money for a certain newspaper, of which the board of directors might leave unpaid any part, not exceeding 1,000*l.*, and might issue "a promissory note," or accept "a bill of exchange," on behalf of the company, for such balance: *Held*, that the substance of the authority was, that the directors might contract a debt to the amount of 1,000*l.*, and secure it by a negotiable instrument; and that the directors, having contracted a debt to that amount, were not precluded from giving security for it, with its legal accretions, by several notes or bills, instead of a single note or bill. *Thompson v. Wesleyan Newspaper Association*, 8 C. B. 849.

9. *Right of secretary to sue.*—*Arrest of judgment.*—In covenant by the plaintiff, as secretary of a joint-stock company, for calls, the declaration stated, that, by indenture made by and between the several persons whose names and seals were or might thereafter be thereunto subscribed, and who had sealed and delivered, or who might seal and deliver the same, of the first part, and *W.* and *M.*, persons nominated to be covenantees for the benefit of the company, of the second part, the parties of the first part covenanted with the parties of the second part, (*inter alia*) to pay the calls. Averment, that whilst the defendant was a shareholder, "and after the execution by the defendant of the said indenture as aforesaid," the directors made a call. Breach, non-payment. The declaration contained no direct averment that the defendant had executed the indenture. By the 4 & 5 Vict. c. xciii., after reciting that difficulties had arisen in legal proceedings by or against the company, since by law all members must be named in such proceedings, and that it was expedient that the company should be rendered capable of suing and being sued in the name of a nominal party, it was enacted, that, in all actions by or on behalf of the company, it should be sufficient to proceed in the name of the secretary as the nominal plaintiff: *Held*, on motion in arrest of judgment, first, that the Statute authorised the secretary to sue on this covenant, notwithstanding it was expressly made with the parties of the second part. Secondly, that the words "after the execution by the defendant of the indenture as aforesaid," were, on motion in arrest of judgment, equivalent to an averment that the defendant had subscribed, sealed, and delivered the indenture. *Wills v. Sutherland*, 4 Exch. R. 211.

10. *Transfer of shares in mining adventure.*—*Stamp.*—In an action against the defendant as a shareholder in a mining adventure, for articles supplied to the mine, it appeared that the persons whose names were entered in a book, were

alone entitled to be shareholders, and that the defendant had been registered by the purser of the mine, in consequence of a document sent to him by the defendant, which was to the effect that one *L.*, for the consideration expressed in a certain deed of transfer, did certify that he had assigned, sold, and transferred to the defendant certain shares in the said mine, with the like parts of and shares in all engines, tools, &c., together with the dividends to be paid in respect of the said shares of the said *L.*, subject to the rules, &c.; to this there was added a statement, that the defendant did thereby agree to accept the same: *Held*, that this document did not require a transfer stamp, under the 55 Geo. 3, c. 184, schedule, part 1. *Toll v. Le, 4 Exch. R. 230.*

11. *Execution against shareholder.*—*Limitation of liability.*—*Policy of insurance.*—A policy of insurance contained a proviso, by which it was agreed between the company and the assured, that the policy should in no case extend or be construed to render liable the respective proprietors of the company with respect to the same, beyond the amount of their respective individual shares; but that the capital stock and funds of the company should alone be charged to answer all claims in respect of the policy. The plaintiff having brought an action on the policy against the company, and having obtained judgment therein: *Held*, that he was precluded by the proviso from issuing execution under the 7 & 8 Vict. c. 110, s. 68, against an individual shareholder who had not signed the policy, although due diligence had been used to enforce the judgment against the company. *Hassell v. Merchant Traders' Ship Loan and Insurance Association*, 4 Exch. R. 525.

Case cited in the judgment: *Halkett v. Merchant Traders' Ship Loan and Insurance Association*, 19 Law J., Q. B. 59.

12. *Winding-up Act.*—*Substitution of official manager as defendant.*—*Suggestion.*—*Evidence.*—The plaintiff having brought an action against *A. B.* for goods supplied to a joint-stock company, of which the defendant was a member, and the action having been stayed under the Winding-up Act, 11 & 12 Vict. c. 45, until the plaintiff should prove his claim before the Master (which he failed to do), he obtained an order to be allowed to proceed in the action, and to substitute *C. D.*, the official manager of the company, as defendant, in lieu of the then defendant. The plaintiff thereupon entered a suggestion on the record, which stated, that the action was commenced and had hitherto been prosecuted against *A. B.*, as a person authorised to be sued as the nominal defendant, on behalf of the company: *Held*, that the acts of *A. B.* were not admissible in evidence on the trial of the cause against *C. D.*, as the plaintiff's suggestion alleged that *A. B.* had been sued as a mere nominal defendant. *Armstrong v. Normandy*, 5 Exch. R. 409.

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## LAW BILLS BEFORE PARLIAMENT.

### SELECT COMMITTEE OF THE LORDS.

THE attention of the Legal Profession is now directed almost exclusively to the various measures under the consideration of the Legislature, affecting the administration of the Law. The number of Bills of this nature, at the present moment, before the two Houses of Parliament is, we believe, altogether unprecedented.

The six Bills introduced by Lord St. Leonards, in fulfilment of the promise made by him at the opening of the Session, together with Lord Brougham's "District Courts of Bankruptcy Abolition Bill," presented in November last, have all been referred to a Select Committee of the Law Lords. This Committee has already had several meetings which have been attended constantly by the Lords Lyndhurst, Brougham, Truro, and St. Leonards, and by the Lord Chancellor, whenever the numerous official claims upon his time permitted his attendance. Assuming, as we are bound to do, that the noble and learned individuals named, assembled with no other object but to inquire into the operation of the measures submitted to them, and render those measures, if approved of, effective and satisfactory, we can hardly conceive a committee more happily constituted for such a purpose. On the other hand, if personal or political considerations were allowed to influence or interfere with its deliberations, no beneficial result could be reasonably anticipated.

Two questions have been referred to the Select Committee, upon which some degree of anxiety, mingled with curiosity prevails in professional circles, as well as amongst the general public. The first arises upon the Bill of Lord St. Leonards, "for the further relief of the Suitors of the

High Court of Chancery," and the second upon those somewhat inconsistent measures, "a Bill to extend the jurisdiction of the Court of Bankruptcy and to make such Court auxiliary to the Court of Chancery," and the Bill already referred to, abolishing the district Courts of Bankruptcy. With respect to the "Chancery Suitors' Further Relief Bill," the Lord Chancellor and Lord St. Leonards are at issue, and as regards those two Bankruptcy Bills, a species of antagonism exists between Lord Brougham and Lord St. Leonards.

The Chancery Suitors' Further Relief Bill, as most of our readers well remember, was introduced to the House of Lords as a measure by which a considerable annual saving would be effected and the Suitors' Fund augmented, by substituting nominal for actual sales and purchases of stock, under the orders of the Court of Chancery. The machinery by which this saving of expense is intended to be effected is simple enough. It is the principle in operation at the clearing-house of the city bankers. The preamble of the printed Bill recites that, "sales of stock standing in the name of the Accountant-General and purchases of stock in his name are daily made, in pursuance of orders of the Court, for or on account of the several suitors of the Court and at a considerable expense to such suitors; that the objects intended to be effected by such orders might, to a great extent, be accomplished without actual sales or purchases of stock, by opening new and proper accounts in the books of the Accountant-General, but that it may be found necessary at certain times to sell stock in order to raise cash to meet demands, or to invest cash in the purchase of stock; that an account is kept in the Bank of England of the fluctuations in the price of stock, and an average of such price struck

ly at one o'clock, which average would furnish a ready mode of striking the price of stock, and enable the Accountant-General to fix the price of stock directed to be transferred, without employing a broker to value, for which a per centage would be charged." It is then proposed to enact, that the Lord Chancellor shall—

"By orders to be from time to time made for that purpose, make such provisions as to him shall seem meet for preventing sales and purchases of stock in the name of the said Accountant-General for or on account of the suitors of the said Court, where the object of the orders directing such sales or purchases can be effected by transfers or entries of debits or credits in the books of the said Accountant-General and in the accounts of the said suitors therein, and for fixing the price to be paid, allowed, or received on such sales or purchases according to the average price of stock of the day ascertained from the account so as aforesaid kept at the Bank of England, and also by order to make provision, by reference to the said average price of stock, for fixing the value of stock directed to be transferred as on or according to its value on a given day."

And also, that "no brokerage shall be charged to the suitors of the said Court for or in respect of any sale or purchase of stock in the name of the said Accountant-General directed to be made by or in pursuance of any order of the said Court, except in cases where actual sales or purchases of stock shall be necessary to be made for the purpose of accomplishing the objects of the order or orders directing the same, and shall be made accordingly, and in such cases to the extent only to which such actual sales and purchases of stock shall be made, and only the brokerage actually paid."

Upon the second reading of the bill containing these provisions, the Lord Chancellor disappointed and somewhat startled the House of Lords, by announcing that the measure, so far from effecting any saving—the only purpose for which it was framed—would produce increased expense, and that this he should undertake to demonstrate. The report of the Select Committee, no doubt, will set this question at rest, and it may be hoped that if the measure of economy suggested by Lord St. Leonards is found to be defective, some other plan will be devised by which the public may obtain the benefit of the large sums now charged to the suitors of the Court of Chancery under the name of brokerage; and that other obvious improvements in the Accountant-General's department will not be delayed.

The rival Bankruptcy Bills before the Select Committee present considerations of

a very different nature. Lord St. Leonards proposes to add to the jurisdiction of the Court of Bankruptcy, by giving the Commissioners concurrent jurisdiction with the Court of Chancery in administering the estates of deceased traders in certain cases, and by rendering the administration more effective and satisfactory in various particulars. Lord Brougham proposes that the country Bankrupt Commissioners, which he was mainly instrumental in creating, should now be abolished, and that the jurisdiction should be vested in the County Court Judges. Lord St. Leonards proposes, that the Commissioners, Registrars, and other officers of the Court of Bankruptcy, acting in the country districts, shall be auxiliary to the Court of Chancery, "in such matters, for such purposes, and under such regulations, as the Lord Chancellor, with the consent of the Lords Justices, the Master of the Rolls, and Vice-Chancellors, or any three of them, shall by general orders in that behalf direct." Lord Brougham proposes, that the County Court Judges, and not the officers of the Court of Bankruptcy, should act in aid of the Court of Chancery.

Upon some minor points connected with the administration of the Bankrupt Laws, Lord St. Leonards and Lord Brougham are also understood to entertain conflicting opinions. As all our readers are aware, the existing Bankrupt Law requires, that when a bankrupt obtains his certificate, the Commissioner shall direct whether it is to be of the first, the second, or the third class, according to the view the Commissioner takes of the cause of the bankruptcy and the bankrupt's conduct as a trader. The classification of certificates imposes on the Commissioner the duty of scrutinising the conduct of the bankrupt in a manner and with a nicety which Lord St. Leonard conceives to be unnecessary in the administration of Justice, and to have produced dissatisfaction. He therefore proposes to enact that—

"The certificate of conformity awarded to a bankrupt shall be in the form contained in the Schedule Z. to "the Bankrupt Law Consolidation Act, 1849," except that the words specifying the cause of his bankruptcy, and designating the certificate as of the first, second, or third class, as the case may be, shall be omitted; but in any particular case the Commissioner who shall award such certificate if he shall upon his own motion think the bankrupt highly meritorious, may add thereto the following words:—"And I further certify my approbation of the manner in which the said bankrupt has conducted his business."

It seems that the form in the Schedule of the Bankrupt Law Consolidation Act, designating the certificate as of a particular class, originated with some gentlemen in the city, and is not the suggestion of any legal mind; and that those at whose instance it was introduced, are anxious to be allowed an opportunity of stating that in their opinion the classification of certificates has fully answered the purpose for which it was designed, and has tended to encourage probity and fair dealing amongst the classes subject to the Bankrupt Laws. The views of those gentlemen, it seems, are warmly taken up by Lord Brougham as well as by certain of the Bankrupt Commissioners, whilst Lord St. Leonards appeals to the sense of the Legal Profession, and to the fact, that since the passing of the Bankrupt Law Consolidation Act, the trading community evince a greater indisposition to resort to the Court of Bankruptcy, and are more prone to enter into deeds of arrangement and composition, by which the provisions of the Bankrupt Law are evaded and the utility of the Court ignored.

We should lay ourselves open to the imputation of inconsistency if we hesitated to state, that in the controversy as regards the utility of "class certificates," we concur altogether with Lord St. Leonards. When the notion was first broached, attention was called in this publication to the difficulty of the task it was proposed to impose upon the Commissioners—who, be it remembered, are lawyers, and not gentlemen who have been engaged in commerce—when they were called upon to gauge with minute exactitude the conduct of a bankrupt, it may be in a long course of trading. The absurdity of introducing the distinctions of railway travelling into the matter of bankrupts' certificates was also exposed, but neither argument nor ridicule prevailed with those who generated this fantastic scheme, and the Bankrupt Law Consolidation Act passed, with this and many other objectionable provisions, at the close of the long Session of 1849. Nothing that has since occurred has caused us to change the unfavourable view then entertained as to the expediency of asking the Commissioners to determine to which of three distinct classes a bankrupt's certificate is to belong; and we may be permitted to doubt whether Lord St. Leonards is not legislating rather too much in the same direction when he proposes that the Commissioner shall, if he thinks the bank-

rupt *highly meritorious*, add to his certificate his approbation "of the manner in which the said bankrupt has conducted his business." This is neither more nor less than a *first-class certificate* under another name, and why a Commissioner, who knows just as much or as little of a bankrupt's mode of conducting business, as the creditors or the bankrupt think it desirable to submit to him, should be required to add or withhold his approval we are at a loss to understand.<sup>1</sup>

It is only right to add, however, that in the opinion of those best acquainted with the practice of the Court of Bankruptcy, the effect of granting classified certificates upon the business of the Court, has been greatly exaggerated. The instances are few, if any, in which respectable persons engaged in commerce have been deterred from invoking the assistance of the Court of Bankruptcy, by the dread of the investigation requisite to enable the Commissioner to determine upon the class of certificate. Men in trade have deserted the Court of Bankruptcy, and devised other means of winding up the affairs of insolvent traders, because the *expenses of administration* are wholly disproportioned to the benefits obtainable by suitors. The law, though not perfect, is founded upon principles which secure universal concurrence, but the trading community *count the cost*, and think that justice, as it is administered in bankruptcy, is too expensive a luxury.

We understand that the Select Committee proceeded at its earliest sittings to the consideration of the "Criminal Law Consolidation Bill," and that as it is proposed to examine witnesses upon the Lunacy and Bankruptcy Amendment Bills, it is not probable that any reports upon those bills can be agreed upon until after the Easter recess. Upon the questions suggested, as to which a diversity of opinion is supposed to exist, or upon any other questions that may arise, the calm good sense and great practical experience of both Lord Lyndhurst and Lord Truro cannot fail to exercise an influence over the decisions of the Select Committee, from which the best results may be anticipated.

<sup>1</sup> The sense in which the existing law is understood, and the spirit in which it is administered, were illustrated in a recent case in which one of the London Commissioners with more *naïveté* than judicial gravity, remarked, that he was not going to make first-class certificates as common as knighthood!!



## LAW AMENDMENT SOCIETY.

## REPORT ON PROFESSIONAL REMUNERATION.

THE Committee of the Law Amendment Society, to which a consideration of "The relations between the Bar, the Attorney, and Client," was referred, has deviated from the topics which might have been expected to occupy its attention, for the purpose of dissecting an "attorney's bill." The operation has been performed in a spirit the reverse of friendly or even fair, and the following deductions, the accuracy of which our readers can estimate, are drawn :—

"On inquiring, in what respects the charges of an attorney differ from those in other Professions or businesses, it will at once appear that there are some very important points of difference. 1st. The attorney is allowed to charge and in fact does charge, for the drawing and copying of all writings, conveyances, documents, and pleadings, in direct proportion to their length. 2ndly. He does not make one entire charge for the business done, nor does he usually charge so much as may be agreed on beforehand,<sup>1</sup> nor so much as the business may be worth on a *quantum meruit*, but he makes a certain fixed charge for each individual item or step in the business, according to the scale of costs allowed on taxation, the payment of which may be enforced either by action or by the summary process of an attachment, or by means of a Judge's order. 3rdly. His charges are in many cases compulsory, as where the losing party has to pay his adversary costs. 4thly. He enjoys a monopoly; and in case of dispute, the amount of his charges, instead of being submitted to a jury, is subject only to the review of a special tribunal, composed of gentlemen who have at some time or other followed his own Profession."

This short extract affords a fair specimen of the narrow and illiberal spirit which prevades the report, and which is further and more strikingly illustrated by tabular statements, showing the supposed "comparative costs of copying and engrossing as charged by solicitors and law stationers," and the supposed items in "a solicitor's bill of costs for a common lease of 30 folios on two skins," which is made to amount to 8*l.*, of which 3*l.* 3*s.* 4*d.* is attributed to the charges for professional skill, 2*l.* 10*s.* for copying, and 2*l.* 6*s.* 8*d.* for materials, money paid, &c. In these calculations the fiscal and other burdens to which the attorney is subjected, are wholly overlooked, and the restraints imposed upon him in the transaction of business, and in reference to

the recovery of the charges to which he is fairly entitled for services performed, are liberally construed as privileges which he enjoys at the expense of the public.

It is hardly necessary to observe, that the matter of fact involved in the proposition last cited, is not correct, many of the gentlemen on whom the duty is thrown by the Legislature of taxing attorneys' bills, have not at any time followed the Profession of attorneys. The recollection of our readers will suggest numerous existing instances to prove that the assertion is erroneous. The model bill which the Committee have set forth, is said to have been kindly drawn out by a solicitor for the Committee, but from the spirit in which the paper is framed, we infer that solicitors have had little to do with its concoction.

THIS Special Committee of the Law Amendment Society, it appears, was appointed to consider the present relation between the barrister, the attorney, and the client; and to report whether any and what alterations can be made therein with *advantage to the Public.*<sup>2</sup>

The following are the conclusions at which the Committee have arrived :—

"On a review, then, of the whole system of the charges of solicitors and attorneys as allowed on taxation, your Committee think it clear that the basis on which it is founded is radically unsound, and that the details by which it is carried out are defective. And they are convinced that the time has arrived at which a thorough reform is absolutely necessary. That reform should, in their opinion, be based on the principle of remunerating the professional man fairly and properly for the exercise of his professional skill,—of paying him for what he really does, and in no case for what he does not do; and of abolishing the practice of allowing the high profits of one class of business to compensate for the inadequate payment for another.

"In order to carry out these views, your Committee submit that all charges in proportion to length alone (with the exception to be presently noticed) ought at once to be wholly abandoned in all branches of the law; that charges in proportion to the number of *steps or attendances*, should be restricted within the narrowest possible limits; that the charges by length for necessary copying and engrossing, should be the *same as those of the law stationers*; that the charge for drawing or preparing all documents and pleadings *whatever* should include the instructions and necessary copies and attendances; *and that when a docu-*

<sup>1</sup> This the Law does not allow.

<sup>2</sup> Justice also to the Profession appears to have been put out of the question.

ment is settled by counsel no other charge for drawing should be allowed. And they think that in all matters of drawing, whatever the true criterion for estimating the proper sum to be charged is 'to consider not the length of such document, but only the skill and labour employed and the responsibility incurred in the preparation thereof,' and that the taxing-officers should be instructed accordingly. This principle has been already accepted by Parliament in Lord Brougham's Acts (8 & 9 Vict. cc. 119 and 124), in the case of deeds and leases; and if the principle be sound in any case, as your Committee are convinced it is, they are unable to see any reason why it should not be applied generally. They are aware that it has been said to be impossible to estimate satisfactorily the relative skill, labour, and responsibility of preparing documents; but your Committee, giving due weight to this objection, and referring to the evidence already adduced, still consider that the Taxing-Master would be able to determine these matters with substantial justice.

"In framing a scale of costs under the New County Courts' Act, it is understood that the Judges to whom the matter has been referred have acted on principles very similar to those above advocated, as have also the Judges of the Superior Courts in their instruction of Hilary Term, 1853, to the taxing-masters, so far as the shorter proceedings at law are concerned. And your Committee believe that such a system as they have proposed would work on the whole much better than that now in force; and they think that if some such arrangement is not adopted, the ordinary tribunal of a jury will have to be substituted for that of the Taxing Master.

"As to the remuneration of counsel, special pleaders, and conveyancers, it is to be observed that the first of these classes of practitioners perform the duties of advocacy,<sup>3</sup> but they all advise on legal matters, and draw pleadings, conveyances, or other documents. For the last-mentioned class of services the payment is in a great degree according to the length, though not perhaps so strictly as in the case of the attorney. A conveyancer would be paid about a guinea for every ten pages of his draft, and a special pleader would mark a higher fee for a long than for a short pleading. The skill, however, which is required to frame a neat and concise draft is clearly greater than that which would be exerted in stringing so many common forms together,—an operation which is usually performed by the pupils or the clerk; and so also it cannot be doubted that the time and trouble expended in deciding whether a particular matter can be given in evidence under the general issue, may, and often does, far exceed the time and trouble of pleading the matter specially. It is true that the long draft or the special plea are more troublesome to transcribe, but they are not for that reason any the more valuable to the client.

"The observations, therefore, which have been made in the case of solicitors, in respect to payment in proportion to length, will apply with equal force to counsel, special pleaders, and conveyancers. And your Committee, having already expressed their opinion that that method of payment should be entirely abandoned in all branches of the law, consider that the fees to be paid to counsel, special pleaders, and conveyancers, should be regulated by the same criterion as in the case of solicitors and attorneys. And if this suggestion were adopted they think it would be found to be to the interest of all branches of the Profession that legal documents should be as short and as clear as possible.

"The practice of feeing the counsel's clerk as well as his master, your Committee consider to be very undesirable. They think that the fee to the counsel should always be a sufficient remuneration to him, and that he ought to pay his own clerk.

"In respect to the payment for advocacy, your Committee fear that there is some ground for the statement that counsel not unfrequently take briefs in causes, at the argument or trial of which they may be unable, in consequence of a press of business, to attend, and that under these circumstances the fee is not returned.

"It is certain that loud and frequent complaints have been made on the part of the public press, and in other quarters, on this head. And your Committee think it desirable that a professional rule should be established to obviate the inconvenience of a practice, the effect of which is to damage the reputation of the Bar."

We must reserve to another opportunity the consideration of the premises which have led to these results; but may for the present observe, that in substituting the law stationer for the solicitor, the learned members of the Committee have made no allowance for the careful examination of the deed to be executed, nor for the responsibility of its being accurately transcribed.

The plan seems to be this:—that the solicitor should find the capital—that he should pay the barrister his fee, the Government its stamps, the officers of the Courts their fees, the law stationer his charges;—that he should also pay his clerks' salaries, his office rent, his annual certificate, and "live on the air." How long is it supposed that the attorneys will act as bankers, advancing money for all these fees and disbursements, and derive no profit? Their branch of the Profession is an honourable one, and much may be endured in the transition from one state of practice to another, especially as it is alleged that the Public at large is to gain by the change; but we see no provision made

<sup>3</sup> Attendance at Judges' Chambers is an exception.

for the future maintenance of the respectable solicitor in the position he has occupied, and in which it is the interest of the community he should be upheld. On this, however, as on other occasions, we are opposing, we believe, only a few law reformers, and that the higher authorities and the general body, both of Bench and Bar, are equally opposed to this absurd plan of cheapening the Law until it becomes worthless and impracticable.

### THE LORD CHANCELLOR'S REGISTRATION OF ASSURANCES' BILL.

THE following in an analysis of the new edition of this project for "relieving the burdens upon Land:"

[The clauses in italics are either new or altered from the Bill last before the House of Lords.]

A Land Register Office to be established, and proper buildings to be provided therefore by Treasury; Sect. 1.

The Queen may appoint registrar and assistant registrars; s. 2.

The Lord Chancellor to appoint clerks and subordinate officers; 3.

How registrar and assistant registrar shall be qualified, and oath to be taken by them; s. 4.<sup>1</sup>

Registrar, assistant registrar, and such other officers as Treasury think proper, to give security; s. 5.

Registrar, with other persons appointed by her Majesty, to divide England into districts; s. 6.

Commencement of registration; s. 7.

Assurances of land in England executed after commencement of registration may be registered by depositing original or a copy and making the proper entries; s. 8.

An index of titles to be kept, and assurances to be indexed therein under heads designated by numbers; s. 9.

An index of the names of grantors to be kept; s. 10.

Reference to entries may be made of appointments of new trustees, &c., in index to testators and intestates, instead of the index to the names of grantors; s. 11.

Decrees in equity creating, declaring, &c., interests in land, and also decrees in equity by which any such decree is varied or reversed, to be considered assurances; s. 12.

All private Acts of Parliament affecting lands to be assurances; s. 13.

Where by a public Act lands are vested upon payment of money, &c., a memorandum of such payment or other act may be registered,

and evidence of the payment deposited with it: s. 14.

Equitable mortgage by deposit of deeds, and liens by reason of non-payment of purchase money, may be registered by depositing a memorandum; ss. 15, 16.

Assurance to be considered to have been made by the person whose right, &c., in the lands shall be bound by the decree, &c.; s. 17.

As to the registration of wills; s. 18.

Letters of administration or affidavit of intestacy may be registered; s. 19.

An "Index to Testators and Intestates" to be kept for all England; and where a will, &c., is registered, an entry of testator's or intestate's name to be made in such index, and also an entry of the will, &c.; s. 20.

*Copies deposited for registration may be copies made or examined in the register office or copies furnished by the parties requiring registration; s. 21.*

*Provision for registration in the case of assurances lost or destroyed; s. 22.*

Any person claiming under an assurance may compel the registration thereof, by application to a Judge; s. 23.

Judge may make order as to costs, and order an office copy to be furnished at the expense of the applicant; s. 24.

Application may be made to the Court against the order of Judge or upon his refusal to make an order; s. 25.

Where order or rule for delivery of any document to be registered is not complied with, the order or rule may be registered in lieu thereof; s. 26.

Petitions for adjudication of bankruptcy, and for commissions of bankrupt, and appointment of assignees in bankruptcy in England and Ireland, and acts and warrants of confirmation in Scotland, may be registered; s. 27.

Vesting orders and appointments, &c., of assignees in insolvency may be registered by deposit of a copy or certificate, and making the proper entry; s. 28.

An "Index to Bankrupts and Insolvents" to be kept; s. 29.

Assurances authorised to be registered to be void as against purchasers if not registered; s. 30.

Estate or interest arising upon Act upon payment of money, &c., equitable mortgage by deposit of deeds, and lien for purchase-money, to be void as against purchasers, unless memorandum registered; s. 31.

Assurance merging any interest not to have such effect as against subsequent purchaser of such interest, unless entry be made to lead such purchaser to the assurance; s. 32.\*

If assurance duly entered as to part only of the lands it shall be deemed duly registered as to such part only; s. 33.

Unregistered will to be void against purchaser from persons entitled under a registered will, or in default of a will where letters of ad-

<sup>1</sup> Attorneys and solicitors who were included by Lord Truro in the qualification for office, are retained in the present Bill.

\* The clauses marked thus are transferred from other parts of the former Bill.

ministration or affidavit of intestacy registered :  
s. 34.

Court of Chancery may order registration of affidavit of a will to be cancelled ; s. 35.

Purchasers protected against bankruptcy and insolvency, unless appointment of assignees, &c., be registered ; s. 36.

Protection of purchasers against subsequent adjudication in bankruptcy where the petition is not registered ; s. 37.

The priority given by the foregoing provisions to be enforced in equity, notwithstanding notice ; s. 38.

Notice of uses or trusts not manifested by a registered assurance, and uses or trusts declared by reference to an unregistered assurance, not to affect purchaser for valuable consideration ; s. 39.

Inhibition against alienation may be entered by persons interested under uses or trusts affecting estates vested under a registered assurance ; s. 40.

Inhibition to be entered in Index of Titles ; s. 41.

Provision for cancelling inhibition ; s. 42.

Power to Court of Chancery to restrain registrar from cancelling inhibition : s. 43.

Persons claiming under assurances made while inhibition is on the register, to be effected by and take subject to the uses and trusts not shown by a registered assurance ; s. 44.

Power to any person to enter a caveat ; s. 45.

How caveat shall be entered ; s. 46.

Extent of protection to be afforded by caveats ; s. 47.

Entries to be made immediately on receipt of documents, and time of receipt to be marked ; s. 48.\*

The protection of the Act to extend to persons who claim under purchasers ; s. 49.\*

Priority or protection by legal estate and taking not to be allowed ; s. 50.\*

Certificate of registration may be delivered out, and may be deposited by way of equitable mortgage ; s. 51.\*

Registration substituted for enrolment under 3 & 4 Wm. 4, c. 74, and 4 & 5 Wm. 4, c. 92, as respects lands in England ; s. 52.

A seal to be made and kept, and the impressions thereof to be taken judicial notice of ; s. 53.

Duplicate originals of deposited documents may be compared at the office, and certified ; and every document so certified shall be received as evidence that another part of the same assurance has been deposited ; s. 54.

Copies of and extracts from deposited instruments to be provided on application, and to be certified ; and the seal of the office, with a certificate, to be evidence of such copies and extracts ; s. 55.

In cases where there are duplicates of a registered assurance, one duplicate to be exempted from stamp duty, provided the other is duly stamped ; but the exemption not to apply to duplicates of leases where either part is executed by lessee ; s. 56.

Memorials, office copies, extracts, and certificates, requisitions, &c., to be exempt from stamp duty ; s. 57.

No documents deposited at the register office to be removed except on legal process ; s. 58.

Any will deposited at register office may be removed for the purpose of being proved, &c., but after being proved, &c., must be returned ; s. 59.

Searches of indexes to be permitted, and inspections of deposited instruments allowed ; such searches to be made on requisition, and certificates given ; s. 60.

The duty of an attorney, &c., to be deemed fulfilled if he have caused an office search to be made ; attorneys, &c., indemnified in relying on the accuracy of certificates ; s. 61.

Registrar may order that documents to be deposited shall be written bookwise, or otherwise, &c. ; additional payment on persons sending documents to be deposited which shall not be conformable with such order ; s. 62.

Registrar may require statements for regulating the entries to be sent with assurances ; s. 63.

Officers of the register office not to be held responsible for omissions or mistakes occasioned by defects in the statement ; s. 64.

Errors in entries may be corrected by registrar ; s. 65.

Registrar, with approval of Lord Chancellor, Master of the Rolls, and two Common Law Judges, may make regulations ; s. 66.

Registrar to report to Lord Chancellor, and reports to be laid before Parliament ; s. 67.

Fees under this Act to be fixed by Treasury ; s. 68.

Salaries may be assigned to the registrar and other officers of the register office ; s. 69.

Expenses of the register office to be allowed out of the Consolidated Fund ; s. 70.

Moneys received by the office may be applied in payment of the expenses of the same ; s. 71.

Subject to the last power, all moneys received by the office to be paid by the Consolidated Fund ; s. 72.

Audit of accounts of the office ; s. 73.

Repealing local Register Acts ; s. 74.

Bargains and sales not to be enrolled in local offices after commencement of registration under this Act, and no assurance to be registered in local offices after time appointed by Lord Chancellor ; s. 75.

Lord Chancellor, &c., to appoint time for closing local register offices ; s. 76.

Vacancies in office of register for local offices in Yorkshire not to be filled up, and offices of registers for Middlesex to cease ; s. 77.

Treasury to fill up vacancies in local register offices ; s. 78.

As to the custody of documents in local register offices ; s. 79.

Copies of assurances to be made after closing of offices by persons nominated by Treas-

sure to fill vacancies in local register offices to be good evidence; s. 80.

Compensation to officers of local register offices; s. 81.

Instruments required to be registered in the local register offices may be registered in the register office established under this Act; s. 82.

*Saving as to Crown lands; s. 83.*

Copyhold lands not to be affected; s. 84.

Leases, &c., for not more than 21 years not to be affected where possession goes along with such leases, &c. Proviso, where actual possession does not go along with such lease, &c.; s. 85.

*Inclosure awards not to be affected; s. 86.*

Shares in companies not to be affected; s. 87.

*Adverturers' lands within the Bedford Level not to be affected; s. 88.*

None of the exceptions to affect the provision to prevent protection by legal estates or tacking; s. 89.

Before whom affidavits to be sworn; s. 90.

False swearing to be punished as perjury; s. 91.

Punishment for forging signatures or counterfeiting impressions of seal of register office; s. 92.

Actions for damages to be brought against the registrar, and if final judgment recovered, damages to be paid out of Consolidated Fund; Notice to be given to Attorney-General; registrar not personally liable; s. 93.

As to costs if judgment be given for defendant, &c.; s. 94.

Provision for case of a writ of error; s. 95.

Registrar may compromise action; s. 96.

Limitations of actions brought against the registrar; s. 97.

Actions not to abate by death of registrar, &c.; s. 98.

Lord Chancellor may transfer registry of judgments, &c., to land register office; s. 99.

Treasury may alter fees; and fees to be accounted for and applied as other fees received by registrar; s. 100.

Compensation to senior Master of Common Pleas; s. 101.

Interpretation of terms; s. 102.

The present Bill has been, in some respects, differently arranged from the last; but no material alteration or improvement has been effected in it, and we apprehend it is open to all the objections which were urged against the last and all former projects. It is clear, we think, that it would be greatly to the pecuniary interest of the lawyers for the present, and probably the next generation, to let the Bill pass. Indeed, an old and satirical practitioner strongly advises that the reformers should be left to themselves, not only on this, but all other occasions; and he contends, with some plausibility, that whilst the said reformers avail

themselves of the useful and practical suggestions of attorney and solicitors, and though they profess to have regard to their just remuneration and the upholding of a respectable body of practitioners, no indications are given of carrying their professions into effect.

## NOTICES OF NEW BOOKS.

*New Commentaries on the Laws of England (partly founded on Blackstone).* By HENRY JOHN STEPHEN, Serjeant-at-Law. Third edition, prepared for the press by JAMES STEPHEN, Barrister-at-Law. In 4 vols. London: Butterworths, 1853.

AMIDST the changes which are unceasingly taking place in the general principles of the law by legislative enactments, and in practice by the Rules of Court, it is well that able and learned authors are engaged in recording and commenting upon the effect of those changes, so that the practitioner and the student may be enabled to ascertain, from time to time, with some approach to certainty, the actual state of our system of jurisprudence.

It is, indeed, difficult to keep pace with the rapid reformatations and legal novelties which, Session after Session, and Term after Term, are in progress before us. It is not without its use, we trust, that (in our own vocation), week by week, these changes are noted as they arise, and that our quarterly Contemporaries are able at more distant intervals to sum up and comment on them; else we know not how the Profession could hold on its course and discharge its duty to the community.

Besides these periodical aids to the members of the Profession, we should not pass by the valuable, though brief and concise, works, which are constantly issuing from the legal press, by way of notes and annotations on New Statutes and Rules. But beyond the periodical expositions, in which we take a share, and the separate and detached commentaries on particular Statutes, we are glad to observe that our great standard work, "Blackstone's Commentaries," is still continued and ably edited. Various are the editions of this great legal classic. We eschew the task of comparing the merits of rival editors, but marvel that our own time has not produced a writer of sufficient industry, learning, powers of thought, arrangement, and composition, equal to the task of producing, not "Commentaries" only, but a lucid and con-

cise Code of the whole Law of England. We believe that the chief want in this respect is industry — great and persevering industry. In justice, however, it must be allowed that small encouragement is offered towards the performance of so great and patriotic a work, when it is remembered that so many legal "journeymen," not "masters," are engaged in tinkering our laws, not making them with a master's hand.

Notwithstanding our regret that a better state of legislation and of legal science does not prevail, we welcome a new and third edition of Mr. Serjeant Stephen's Commentaries on the Laws of England, founded on the text of Blackstone. In this edition, the learned author has been ably assisted by his son, Mr. James Stephen. They have with great diligence and accuracy digested the chief alterations in the law since the last edition of the work—a task of great difficulty, requiring no ordinary knowledge of the law, as it was and as it is, with an extraordinary power of condensing and arranging the changes which have been effected in nearly all departments of our judicial system from year to year. The arduous task of this new edition has been ably performed. We are bound, however, to observe that the plan of the work, as originally devised by Blackstone and continued by the present and other commentators, precluded more than a brief and concise notice of the alterations in the law. Many parts, therefore, of the work (with all its excellence) will disappoint the student in his researches, and fall short of that fullness of explanation which he may expect to find. We notice this in no disparagement of the merit of the work, which will sustain its original reputation. The defect is evidently unavoidable. What in Blackstone's time, nearly fourscore years ago, might well be limited to four volumes, can scarcely now be brought within the same dimensions. Indeed, without going farther back than the 53 years of the present century, it is manifest that no amount of labour, judgment, learning, or discrimination could achieve the consolidation and arrangement—the interweaving and harmonising of the former with the new law in the same compass.

The task of truly ascertaining, arranging, and condensing the result of the last five years of legislation required no ordinary power of generalizing, accompanied by the quick perception of principles, the due appreciation of innumerable details, and ex-

tracting from them the prominent or salient points which are essential to be treasured up in the memory. We can conceive that the learned author must have sat, as it were, in judgment on every legislative or judicial alteration, and determined, *pro* or *con*, whether the several points comprehended in the Enactment or order of Court before him, deserved to be recorded or noticed in a book treating, in a scientific and general manner, of the whole scope of our comprehensive and complicated system of jurisprudence. Even Blackstone himself failed in that part of his work which related to our refined and subtle, but just principles of equitable jurisdiction. Some of our legislators are aiming at the "fusion of Law and Equity," but with the experience before us, we think, the division of labour had better be continued, though it may be convenient that larger power and jurisdiction be given to Courts, both of Law and Equity, to do full justice in the case brought before them.

Notwithstanding these hints at further improvements in the composition of legal works, we know not any work which, taken as a whole, can be compared with the Commentaries as the first introduction to the study of the laws of England, whether for the use of the lawyer, the legislator, or the private gentleman.

In this new edition, the various alterations in the Law which have been effected since the last edition, are skillfully condensed and arranged in their appropriate departments, so far as the scope and plan of the work permitted them to be stated.

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## ORDER OF COURT.

### CHANCERY HOLIDAYS.

February 23rd, 1853.

WHEREAS by the 1st Article of the 8th of the General Orders of the High Court of Chancery of the 8th of May, 1845, it is provided that the Easter Vacation is to commence and terminate on such days as the Lord Chancellor shall every year specially direct. His Lordship doth order that the Easter Vacation for the present year shall commence on *Thursday* the 24th day of *March* next, and terminate on *Saturday*, the 2nd day of *April* next. And that this Order be entered by the Registrar, and set up in the several offices of this Court.

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## LIST OF SHERIFFS, UNDER-SHERIFFS,

*Note.*—WARRANTS are not granted in Town for these Places (\*)—The Term of

Office Hours, in Term, from 11 till 4; and in Vacation,

## ENGLAND.

<i>Counties, &amp;c.</i>	<i>Sheriffs.</i>
Bedfordshire .. ..	Henry Littledale, of Kempstone-grange, near Bedford, Esq. ..
Berkshire .. ..	Head Pottinger Best, of Donnington-castle, Esq. .. ..
Berwick-upon-Tweed ..	Robert Ramsey, of Tweedmouth, Berwick-upon-Tweed .. ..
*Bristol, City of .. ..	Robert Bright, of Bristol, Esq. .. ..
Buckinghamshire .. ..	Abraham Darby, of Stoke-court, Slough, Esq. .. ..
Cambridge and Hunts. ..	William Whitting, of Manea and Thorney-abbey, Esq. .. ..
*Canterbury, City of .. ..	Thomas Thorpe De Lasaux, of Canterbury, Esq. .. ..
Cheshire .. ..	John Hurleston Leche, of Carden-park, Esq. .. ..
*Chester, City of .. ..	Thomas Quellyn Roberts, of Chester, Esq. .. ..
*Cinque Ports .. ..	The Most Hon. James Andrew, Marquis of Dalhousie .. ..
Cornwall .. ..	Richard Foster, of Castle Lostwithiel, Cornwall, Esq. .. ..
! Coventry, City of .. ..	Abolished by 5 & 6 Vict. c. 10, s. 10 .. ..
Cumberland .. ..	Francis Baring Atkinson, of Rampabeck-lodge, Penrith, Esq. ..
Derbyshire .. ..	Sir John Harpur Crewe, of Calke-abbey, Bart. .. ..
*Devonshire .. ..	Edmund Bastard Henn Gennys, of Whitleigh-hall, Esq. .. ..
Dorsetshire .. ..	William Bragge, of Sadborow, Esq. .. ..
*Durham .. ..	Frederick Aclom Milbank, of Hart, Esq. .. ..
Essex .. ..	John Gurden Rebow of Wivenhoe-park, Esq. .. ..
*Exeter, City of .. ..	Thomas Edward Drake, of New-buildings, Exeter, Esq. .. ..
Gloucestershire .. ..	John Raymond Raymond Barker, of Fairford-park, Fairford, Esq. ..
*Gloucester, City of .. ..	Joseph Carter, of Bell-lane, Gloucester, Esq. .. ..
Hampshire .. ..	John Shelley, of Avington-house, Winchester, Esq. .. ..
Herefordshire .. ..	William Money Kyrle, of Homme-house, Much March, Esq. ..
Hertfordshire .. ..	Sir Thos. Gage Saunders Sebright, of Beechwood-park, Flamstead, Bart.
*Huntingdon and Cambridge	William Whitting, of Manea and Thorney-abbey, Esq. .. ..
Kent .. ..	Francis Colville Hyde, of Syndale-house, Ospringe, Esq. .. ..
*Kingston-upon-Hull.. ..	William Hunt Pearson, of Kingston-upon-Hull, Esq. .. ..
*Lancashire .. ..	John Talbot Clifton, of Lytham-hall, Esq. .. ..
Leicestershire .. ..	Frederick Wollaston, of Shenton-hall, near Hinckley, Esq. .. ..
*Lichfield, City of .. ..	Henry Hall, of Lichfield, Esq. .. ..
Lincolnshire .. ..	Joseph Livesey, of Stourton-hall, Esq. .. ..
Lincoln, City of .. ..	Benjamin Wilson, of Lincoln, Esq. .. ..
London City of .. ..	{ John Carter, of 61, Cornhill, Esq. .. ..
Middlesex .. ..	{ Alexander Angus Croll, of 28, Coleman-street, London, Esq., ..
*Monmouthshire .. ..	Henry Bailey, of Nant-y-Glo, Esq. .. ..

DEPUTIES, AND AGENTS, FOR 1853.

Office of the Sheriffs, &c., for Cities and Towns, expires on the 9th of November.

from 11 till 3.—[From *Laidman's List*.]

ENGLAND.

*Under-Sheriffs.*

*Deputies and Town Agents.*

Theod William Pearce, of Bedford, Esq.	..	Messrs. Maples, Maples, and Pearce, 6, Frederick's-place, Old Jewry.
John Jackson Blandy, of Reading, Esq.	..	Messrs. Gregory, Faulkner, Gregory, and Skirrow, 1, Bedford-row.
James C. Weddell, of Berwick-upon-Tweed, Esq.	..	Messrs. Pringle, Stevenson, and Shum, 3, King's-road, Bedford-row.
William Ody Hare, of Small-street, Bristol, Esq.	..	Messrs. Bridges, Mason, and Bridges, 23, Red-lion-square.
Acton Tindal, of Aylesbury, Esq., (A. U. Edward Robert Baynes, of Aylesbury, Esq.)	..	Charles Cooke, 7, Lincoln's-inn-fields.
Edward Jackson, of Wisbeach, Esq.	..	Messrs. Wing and Du Cane, 1, Gray's-inn-square.
Thomas Thorpe De Lasaux, of Canterbury, Esq.	..	James Fluker, 10, Symond's-inn.
Richard Barker, of Chester, Esq. (A. U. John Hostage, of Chester, Esq.)	..	Messrs. Tatham and Proctor, 10, New-square, Lincoln's-inn.
John Hostage, of Chester, Esq.	..	Messrs. Chester, Toulmin, and Chester, 11, Staple-inn.
Thomas Pain, of Dover, Esq.	..	Messrs. Wright and Kingford, 24, Essex-street, Strand.
Edward Hoblyn Pedler, of Liskeard, Esq. (A. U. Thomas Commins, jun., of Bodmin, Esq.)	..	Messrs. Cooce, Browne, and Kingdons, 10, King's-arms-yard, Moorgate-street.
Warrants are granted	..	By the Sheriff of WARWICKSHIRE.
Silas Saul, of Carlisle, Esq.	..	Messrs. Capes and Stuart, 1, Field-court, Gray's-inn.
Jao. James Simpson, of Derby, Esq.	..	Messrs. Taylor and Colliason, 28, Gt. James-street, Bedford-row.
Thomas Edward Drake, of New-buildings, Exeter, Esq.	..	Messrs. Buckley and Philbrick, Girdler's-hall, 39, Basinghall-street.
Baruch Fox, of Beaminster, Esq.	..	George Weller, 8, King's-road, Bedford-row.
William Emerson Wooler, of No. 3, Bailey, Durham, Esq.	..	Messrs. Pollard and Hollings, Carlton-chambers, 12, Regent-street.
John Stuck Barnes, of Colchester, Esq. (A. U. Messrs. Gepp and Velej, of Chelmsford.)	..	Messrs. Hawkins, Bloxam, and Hawkins, 2, New Boswell-court, Carey-street.
Thomas William Hartnell, of Exeter, Esq.	..	Messrs. Buckley and Philbrick, Girdler's-hall, 39, Basinghall-street.
John Burrup, (firm Messrs. Burrup and Son), Berkeley-street, Gloucester, Esq.	..	Messrs. White and Sons, 11, Bedford-row.
Frederick George Beale, of Gloucester, Esq. (A. U. George Peter Wilkes, of Blackfriars, Gloucester, Esq.)	..	Messrs. A'Beckett, and Simpson, 7, Golden-square.
Charles Seagrim, of Winchester, Esq.	..	William Braikenridge, 16, Bartlett's-buildings, Holborn.
George Maselfield, of Ledbury, Esq.	..	Messrs. Dobinson and Geare, 57, Lincoln's-inn-fields.
Messrs. Longmore and Swarder, Hertford	..	Messrs. Hawkins, Bloxam, and Hawkins, 2, New Boswell-court, Carey-street.
Edward Jackson, of Wisbeach, Esq.	..	Messrs. Wing and Du Cane, 1, Gray's-inn-square.
Alfred King, of Earl Street, Blackfriars, London, Esq. (A. U. William Henry Palmer, of Bedford-row, London, Esq.)	..	Messrs. Palmer, France, and Palmer, 24, Bedford-row.
Thomas Holden, jun., of Parliament-street, Kingston-upon-Hull, Esq.	..	Messrs. Hicks and Son, 5, Gray's-inn-square.
Messrs. Wilson, Son, and Deacon, of Preston	..	Messrs. Ridsdale and Craddock, 5, Gray's-inn-sq.
Stafford Stratton Baxter, of Atherstone, Esq.	..	George James Robinson, 35, Lincoln's-inn-fields.
John Philip Dyott, of Lichfield, Esq.	..	Messrs. Baxter, Somerville, and Co., 48, Lincoln's-inn-fields.
Henry Ward, 51, Lincoln's-Inn-fields, Esq. (A. U. Henry Williams, of Lincoln, Esq.)	..	Messrs. Abbott, Jenkins, and Abbott, 8, New-inn, Strand.
Richard Mason (firm Mason and Dale), of Lincoln, Esq.	..	Messrs. Taylor and Colliason, 28, Great James-st., Bedford-row.
William James, of 5, Basinghall-street, Esq.	..	Messrs. James and Potter, Secondaries' Office, Basinghall-street, City.
Thomas Mortimer Cleobury, of 10, Poultry, Esq.	..	Messrs. Burchells and Hall, 24, Red-lion-square.
William Woodhouse Secreten James Woodhouse, of Abergavenny, Esq.	..	Messrs. Gregory and Sons, 12, Clement's-inn.



## ENGLAND.

<i>Counties, &amp;c.</i>	<i>Sheriffs.</i>		
*Newcastle-upon-Tyne	..	Henry Ingledew, of Newcastle-upon-Tyne, Esq.	.. ..
Norfolk .. ..	..	Daniel Gurney, of North Runcton, Lynn, Esq.	.. ..
Northamptonshire ..	..	Cary Charles Elwes, of Great Billing, Esq.	.. ..
Northumberland ..	..	Walter Selby, of Biddleston, Esq.	.. ..
*Norwich, City of ..	..	George Womuck, jun., of Norwich, Esq.	.. ..
Nottinghamshire ..	..	Thomas Spragging Godfrey, of Balderton, Esq.	.. ..
Nottingham, Town of	..	William Page, of Nottingham, Esq.	.. ..
Oxfordshire .. ..	..	James Morrell, jun., of Oxford, Esq.	.. ..
Poole, Town of ..	..	William Waterman, of Poole, Esq.	.. ..
Rutlandshire . ..	..	John Parker, of Preston, near Uppingham, Esq.	.. ..
Shropshire .. ..	..	Algernon Charles Heber Percy, of Hodnet-hall, Esq.	.. ..
Somersetshire ..	..	Francis Henry Dickinson, of Kingweston, near Somerton, Esq.	.. ..
*Southampton, Town of	..	William Aldridge, of Southampton, Esq.	.. ..
Staffordshire ..	..	Edward Buller, of Dilhorn-hall, Esq.	.. ..
*Suffolk .. ..	..	The Right Hon. John Lord Henniker, of Thornham-hall, Eye	.. ..
Surrey .. ..	..	Thomas Grissell, of Norbury-park, Leatherhead, Esq.	.. ..
Sussex .. ..	..	Francis Barchard, of Horsted-place, Sussex, Esq.	.. ..
Warwickshire ..	..	Sir William Edmund Cradock Hartropp, of Four Oaks-hall, Sutton Coldfield, Bart.	.. ..
Westmoreland ..	..	John Wakefield, of Sedgwick-house, Kendal, Esq.	.. ..
Wiltshire .. ..	..	Francis Leyborne Popham, of Chilton, Esq.	.. ..
Worcestershire ..	..	Charles Noel, of Bell-hall, near Belbroughton, Esq.	.. ..
Worcester, City of ..	..	Charles Bedford, of Worcester, Esq.	.. ..
Yorkshire .. ..	..	Andrew Montague, of Melton-park, Doncaster, Esq.	.. ..
York, City of ..	..	William Hudson, of York, Esq.	.. ..

## NORTH WALES.

*Anglesey .. ..	..	Richard William Pritchard, of Erianell, Esq.	.. ..
Carnarvonshire ..	..	Robert Vaughan Wynne Williams, of Llandudno, Esq.	.. ..
Denbighshire ..	..	Pierce Wynne Yorke, of Dyffryn Alod, Denbigh, Esq.	.. ..
*Flintshire .. ..	..	Whitehall Dod, of Cloverley, Whitchurch, Esq.	.. ..
*Merionethshire ..	..	Thomas Arthur Bertie Mostyn, of Kylan, Esq.	.. ..
*Montgomeryshire ..	..	John Naylor, of Leighton-hall, Esq.	.. ..

## SOUTH WALES.

Breconshire .. ..	..	Wyndham William Lewis, of Eianthetty-hall, Esq.	.. ..
Cardiganshire ..	..	Lewis Fugh, of Aberystwith, Esq.	.. ..
*Carmarthen, Borough of	..	David Bowen, of Priory-street, Carmarthen, Esq.	.. ..
Carmarthenshire ..	..	The Hon. William Henry Yelverton, of Whitland Abbey	.. ..
*Glamorganshire ..	..	Richard Hill Miers, of Ynispenllwch, near Swansea, Esq.	.. ..
*Haverfordwest, Town of	..	John Maddocks, of Haverfordwest, Esq.	.. ..
*Pembrokeshire ..	..	Adrian Nicholas John Stokes, of Saint Botolphs, Esq.	.. ..
Radnorshire .. ..	..	Jonathan Field, of Esgairdunallwyn, Esq.	.. ..

ENGLAND.

*Under-Sheriffs.*

*Deputies and Town Agents.*

William Daggett, of Newcastle-upon-Tyne, Esq.	Messrs. Williamson, Hill, and Williamson, 10, Great James-street, Bedford-row.
Frederick Robert Partridge, of Lynn, Esq. (A. U. Messrs. Adam Taylor and Sons, Norwich) ..	John Wickham Flower, 17, Gracechurch-street.
Henry Philip Markham, of Northampton, Esq. ..	Frederick Ouvry, 13, Tokenhouse-yard.
William Forster, of Alnwick, Esq. ..	George Mounsey Gray, 9, Staple-inn.
Arthur Dalrymple, of Norwich, Esq. ..	Messrs. Bircham, Dalrymple, and Drake, 46, Parliament-street.
Godfrey Tallents, of Newark-upon-Trent, Esq. (A. U. John Brewster, of Nottingham, Esq.) ..	Messrs. Taylor and Collisson, 28, Great James-st., Bedford-row.
Christopher Swann, of Nottingham, Esq. ..	Messrs. Holme, Loftus, and Young, 10, New-inn, Strand.
John Marriott Davenport, of Oxford, Esq. ..	Messrs. Davies, Son, Campbell, and Hand, 17, Warwick-street, Regent-street.
William Parr, of Poole, Esq. ..	Messrs. Holme, Loftus, and Young, 10, New-inn, Strand.
William Shield, of Uppingham, Esq. ..	Messrs. Capes and Stuart, 1, Field-ct., Gray's-inn.
Joseph Loxdale Warren, of Market Drayton, Esq. (A. U. Joshua John Peele, of Shrewsbury, Esq.) ..	Harvey Bowen Jones, 22, Austin Friars.
John Nicholletts, of South Petherton, Esq. ..	Messrs. Dynes and Harvey, 61, Lincoln's-inn-fields.
James Sharp, jun., of Southampton, Esq. ..	Messrs. Trinder and Eyre, 1, John-st., Bedford-row.
Robert William Hand (firm Messrs. Keene and Hand, Stafford, Esq.) ..	Messrs. White and Sons, 11, Bedford-row.
George Lawton, of Eye, Esq. (A. U. Messrs. Jackson, Spark, and Holmes, Bury St. Edmunds) ..	Messrs. Abbott, Jenkins, and Abbott, 8, New-inn, Strand.
William Haydon Smallpiece, of Guildford, Esq. ..	Messrs. Abbott, Jenkins, and Abbott, 8, New-inn, Strand.
William Woodgate, of Lincoln's-inn-fields, Esq. ..	Messrs. Palmer, France, and Palmer, 24, Bedford-row.
Thomas Heath, of Warwick, Esq. ..	Messrs. Taylor and Collisson, 28, Great James-street, Bedford-row.
John Heelis, of Appleby, Esq. ..	George Mounsey Gray, 9, Staples-inn, Holborn.
Thos. Baverstock Merriman, of Marlborough, Esq. (A. U. West Awdry, of Chippenham, Esq.) ..	Messrs. Lewis, Wood, and Street, 6, Raymond-buildings, Gray's-inn.
George Croft Vernon, of Hanbury, Esq. (A. U. Messrs. Hyde and Tymbs, of Worcester) ..	Messrs. Hall and Hunt, 11, New Boswell-court, Carey-street.
Charles Pidcock, of Worcester, Esq. ..	Henry Bedford, 4, Gray's-inn-square.
William Gray, of York, Esq. ..	Messrs. Ball, Brodriek, and Bell, Bew Church-yard.
Henry Anderson, of High Peter-gate, York, Esq. ..	Charles Fiddey, 3, Paper-buildings, Temple.

NORTH WALES.

Thomas Owen, of Llangeftni, Esq. ..	Messrs. Abbott, Jenkins, and Abbott, 8, New-inn, Strand.
David Williams, of Bron Eryri, near Portmadoc, Esq. ..	Messrs. McLeod and Cann, 3, Paper-building, Temple.
John Copner Wynne Edwards, of Denbigh, Esq. ..	Messrs. Tooke, Son, and Holland, 39, Bedford-row.
Arthur Troughton Roberts, of Mold, Esq. ..	Nathaniel Charles Milne, Harcourt-buildings, Temple.
Isaac Gilbertson, of Bala, Esq. ..	Messrs. Holms, Loftus, and Young, 10, New-inn, Strand.
Abraham Howell, of Welshpool, Esq. ..	Nathaniel Charles Milne, Harcourt-buildings, Temple.

SOUTH WALES.

Frederick Rowland Roberts, of Aberystwith, Esq.	Messrs. Hawkins, Bloxam, and Hawkins, 2, New Boswell-court, Carey-street.
James Webb Jones, Quay-street, Carmarthen, Esq.	Robert Gamlen, 3, Gray's-inn-square.
Thomas Parry, of Carmarthen, Esq. ..	Edward Towsey, Quality-court, Chancery-lane.
Alexander Cuthbertson, of Neath, Esq. ..	Messrs. Rowland, Hacon, and Rowland, 31, Fenchurch-street.
William Davies, of Haverfordwest, Esq. ..	Messrs. Hastings, Best, and Smith, 3, Southampton-street, Bloomsbury-square.
Jonathan Rogers Powell, of Haverfordwest, Esq. ..	Messrs. Tindler and Eyre, 1, John-st., Bedford-row.
William Headford Danbney, of Great Grimsby, Esq. (A. U. Richard Green, of Knighton, Esq.) ..	Messrs. Taylor and Collisson, 28, Great James-street, Bedford-row.

## NOTES OF THE WEEK.

## PRIVATE BILLS IN PARLIAMENT.

ORDERED, That no private Bill shall be read in the House of Lords a second time after *Tuesday*, 12th *July*, unless the Chairman of Committees shall report to the House special reasons for extending the time to any such Bill.

That no Bill confirming any Provisional Order of the Board of Health shall be read a second time after *Tuesday*, 19th *July*.

## NEW MEMBERS OF PARLIAMENT.

Henry Lygon, Esq., commonly called Vis-

count *Blmley*, for the Western Division of the County of Worcester, in the room of the Honourable Henry Beauchamp Lygon, now Earl Beauchamp, called to the House of Peers.

Robert Joseph Phillimore, Esq., D.C.L., for Tavistock, instead of Samuel Carter, Esq.

## LAW APPOINTMENT.

The Queen has been pleased to appoint Benjamin Boothby, Esq., to be Second Judge of the Supreme Court of the Colony of South Australia.—From the *London Gazette* of 25th February.

RECENT DECISIONS IN THE SUPERIOR COURTS,  
AND SHORT NOTES OF CASES.

## Court of Appeal.

Feb. 26.—*Evans v. Evans*—Appeal from the Master of the Rolls dismissed, with costs.

— 26.—*In re Cumming*—Traverse directed to issue.

## Lord Chancellor.

*In re Robinson's Charity*. Feb. 26, 1853.

WELCH CHARITY.—APPOINTMENT OF NEW TRUSTEES IN LIEU OF JUDGES OF PRINCIPALITY.

Held, that the Vice-Chancellors have jurisdiction under the 11 Geo. 4, and 1 Wm. 4, c. 70, s. 31, to appoint new trustees of a charity in the place of the Judges of the Welch Courts, thereby abolished, who might have been nominated to act as trustees.

THE testatrix, by his will, dated in November, 1703, appointed the Bishop of St. Asaph and his successors, together with the Chief Justice of Chester and his successors, and his associate Justices, trustees of a charity thereby created, and it had been since duly administered according to his directions. By the 11 Geo. 4, and 1 Wm. 4, c. 70, the jurisdiction of the Welch Courts was abolished, and this petition was presented by the direction of Vice-Chancellor *Turner*, by the bishop and the present vicar of Ruabon, in whom the legal estate vested, for an order to appoint new trustees.

By s. 31 of that Act, it is enacted, that "in all cases where any trust for charitable uses or of a public nature shall have been cast upon the Judges of the Courts hereby abolished, by virtue of their offices, it shall be lawful for the Lord High Chancellor or Keeper of the Seals for the time being, or for the Judges of Assize upon their Circuits in the county of Chester or principality of Wales, to appoint such other trustee or trustees as they shall think fit, by any writing under their hand in place of the former Judge or Judges."

*Kennion* in support.

The Lord Chancellor said, that the Vice-

Chancellor had jurisdiction to make the order asked.<sup>1</sup>

Feb. 23.—*In re Fussell*—Cur. ad. vult.

— 23, 26.—*Edwards v. Champion*—Stand over.

— 26.—*In re Dixon, ex parte Bulmer*—Part Heard.

## Lords Justices.

*Stansfeld v. Hobson*. March 2, 1853.

MORTGAGE.—EQUITY OF REDEMPTION.—STATUTE OF LIMITATIONS.—ACKNOWLEDGMENT.

A mortgagee in possession of certain property mortgaged by a building society, wrote to the plaintiffs' agent in answer to a letter asking for a meeting on the subject, as follows:—"I do not see the use of meeting here or at M., unless some party is ready with the money to pay me off." Held, dismissing, with costs, an appeal from the Master of the Rolls, that this was a sufficient acknowledgment to take the case out of the operation of the Statute of Limitations, and that the plaintiffs were entitled to redeem.

THIS was an appeal from the Master of the Rolls (reported *ante*, p. 114). It appeared that a piece of land in Union Street, Oldham, which belonged to the Union Building Club, was mortgaged to the defendant in September, 1824, and March, 1825, to secure two several advances of 1,000*l.* and interest. The defendant had entered into possession, and in Jan., 1844, the bookkeeper of the society wrote the defendant a letter on the subject of the mortgage, and stating that the members were desirous of settling the business and asking an account of what was due for interest. The defendant, however, never rendered any account, and in February, 1850, in answer to a letter

<sup>1</sup> The Vice-Chancellor *Wood*, on Feb. 23, accordingly appointed the vicar of Ruabon and the rural dean for the time being, and two others, trustees.

from the plaintiffs' solicitor, asking him to fix a meeting on the subject of the property, he wrote:—"I do not see the use of meeting here or at Manchester, unless some party is ready with the money to pay me off." The Master of the Rolls having held that this was a sufficient acknowledgment under the Statute of Limitations, and decreed a redemption against the defendant, this appeal was presented.

*Elmsley and Osborne* for the plaintiffs and respondents; *R. Palmer* and *J. J. Hamilton Humphreys* for the defendant, in support of the appeal.

The Lords Justices said, that the letter was an admission the defendant held as mortgagee, and that some person had a right to redeem if provided with the money due, and it could only apply to the mortgagors, to whose agent it was written in reply to his letter on the subject. The appeal would therefore be dismissed, with costs.

Feb. 25.—*In re Crowther*—Commission *de lunatico inquirendo* to issue.

—26, 28.—*Gooch v. Gooch*—*Cur. ad. vult.*

—28.—*Great Western Railway Company v. Oxford, Worcester, and Wolverhampton Railway Company*—Part heard.

March 1.—*Rodgers v. Nowill*—Motion for commitment discharged by arrangement, for breach of injunction.

#### Master of the Rolls.

*Trimmell v. Fell.* Feb. 21, 1853.

MARRIED WOMAN.—WILL UNDER POWER IN SETTLEMENT.—SURVIVING HUSBAND.

*A married woman bequeathed a sum of money by her will under a power of appointment in her marriage settlement, but she survived her husband and died without republishing her will. In the event of her so surviving she took the property absolutely: Held, that the will was inoperative.*

THE testatrix, Mrs. Frances Hutton, had bequeathed by her will a sum of 1,300*l.* under a power, contained in her marriage settlement, of appointment in case she died before her husband. It appeared, however, that in the event of her surviving her husband, she took the property absolutely. The testatrix survived her husband, and died without republishing her will.

*Lloyd and Rogers*, for the devisee, contended the bequest was valid; *Roupeell* and *Shebbeare*, contra; *R. Palmer* and *E. F. Smith* for other parties.

The Master of the Rolls said, that the will was inoperative.

*Coyle v. Allyn.* Feb. 28, 1853.

DEPENDANT IN CONTEMPT FOR NON-PAYMENT OF COSTS OF EXCEPTIONS TO ANSWER.—TAKING ANSWER OFF FILE.

*The answer of a defendant was ordered to be taken off the file where he was in contempt for non-payment of the costs of exceptions to his answer.*

IN this case the exceptions, which had been taken to the defendant's answer, had not been answered, and upon the defendant neglecting to pay the costs, according to order, he had been taken into custody for contempt.

This motion was therefore made to take the answer off the file.

*Cur. ad. vult.*

The Master of the Rolls said, that as the defendant still neglected to pay the costs for which he was in contempt, the answer must be taken off the file with the costs of this motion.

Feb. 23.—*Watson v. Parker and others*—Injunction granted.

—24.—*In re Henland*—Order for appointment of new trustee.

—25, 26.—*In re Manchester New College*—*Cur. ad. vult.*

—26.—*Asher v. Longridge*—Interim injunction granted.

March 1.—*Cowley v. Watts*—Decree for specific performance of contract.

—1.—*Rochdale Canal Company v. King*—Part heard.

#### Vice-Chancellor Kindersley.

*Melling v. Bird.* Feb. 25, 1853.

PETITION FOR TRANSFER OF FUND PAID INTO COURT UNDER LANDS' CLAUSES' ACT.—COSTS.

*On making an order on a petition presented by a mortgagee of one-tenth part of certain property taken by a company for the purposes of their railway, for the transfer of the fund to the credit of the administration suit, the Court directed that the company should only pay the costs of such petitioner and of the executors of the testator, and that the costs of the parties who had appeared separately should come out of the estate.*

THIS was a petition on behalf of the mortgagee of one-tenth of the income of an estate, directed by the will of the testator in this administration suit to be sold, but which had been taken by the London and North Western Railway Company for the purposes of their railway, for the transfer of the purchase-money which had been paid into Court, under the 8 Vict. c. 18, to the credit of the cause, and for the costs to be paid by the company. All the parties interested had been served, and four had appeared separately.

*Follett, J. Baily, Fleming, Speed, and Eddis*, for the several parties.

The Vice-Chancellor said, that the company were liable to the costs of the parties who were entitled to appear on the petition. As the parties having the same interest as the petitioner might have given in an appearance on the petition, the company were only liable to pay the costs of the petition and the trustees, and the other costs would have to come out of the estate.

said Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of such appeal as the Court

may think proper, and such orders shall be final."

The Court said, that as the letters were inadmissible without a stamp, a nonsuit must be entered.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### RAILWAY CASES.

#### ALLOTTEE.

1. *Scheme proving abortive.—Execution of subscription contract.*—An allottee of shares in a railway company, provisionally registered,—the prospectus of which stated that its capital was to consist of 700,000*l.*, in 35,000 shares, of 20*l.* each,—paid a deposit of 2*l.* 2*s.* per share, and signed the subscription contract, which stated that a capital not exceeding 700,000*l.* should be raised, and gave the provisional directors authority to carry on the undertaking, and to apply to parliament for the necessary powers, and out of the moneys which should come to their hands by way of deposit or payment of calls or otherwise, to pay all costs, &c., and generally to apply such moneys towards the fulfilment of any engagements which they might enter into, and in or towards the soliciting, &c., a bill or bills in parliament, and in obtaining the necessary acts for furthering the scheme.

The total number of shares taken up by the allottees, and upon which the required deposit had been paid, was 18,969 only, representing a capital of 379,380*l.* This number not being sufficient to comply with the standing orders of parliament, the provisional directors, in order to make up the requisite amount, procured a number of persons (of whom the defendant was one) to execute the subscription contract, purporting, contrary to the fact, to become subscribers for shares to the number of 5,230, representing a capital of 104,600*l.*, and to have paid the deposit thereon. Of this fact the plaintiff was ignorant.

The directors, after incurring considerable expense, failed to comply with the standing orders of parliament, and consequently no bill was brought in, and the scheme was ultimately abandoned.

At the trial, the Lord Chief Justice told the jury, that the plaintiff having subscribed for shares, and executed a subscription contract, in an association which was represented to have a capital of 700,000*l.* in 35,000 shares, upon which a deposit of 2*l.* 2*s.* each was to be paid, and 18,969 shares only having been *bonâ fide* taken up,—the project to which the plaintiff subscribed must be considered as determined, and consequently that the committee were not authorised to go to parliament at the plaintiff's expense; and that, under the circumstances, the execution of the subscription contract by the plaintiff had no material effect upon the plaintiff's right to recover:

*Held*, upon a bill of exceptions, that this

direction was erroneous; for, that the subscription contract,—which must be read by itself, and without reference to the previous parcel contract arising upon the letters of application and allotment,—authorised the directors to raise a capital not exceeding 700,000*l.*, but did not require them absolutely to raise that sum before they could take any steps to carry the undertaking into effect; and that, by executing the deed, the plaintiff authorised the directors to do all that was consistent with its provisions, and, amongst other things, to apply the deposits in furtherance of the scheme. *Watts v. Salter*, 10 C. B. 477.

2. *Recovery of deposit.—Abandonment of scheme.—Preliminary expenses.—Evidence.—Resolution of committee of management.—Acquiescence on abandonment of scheme.*—In July, 1845, a railway company was provisionally registered, and a prospectus issued, headed—"Capital, 2,500,000*l.*, in 100,000 shares, of 25*l.* each." On the 6th October, 1845, the plaintiff applied for 200 shares by letter, in which he said, "I agree to accept the same or any portion thereof, subject to the provisions of the subscribers' agreement, and I further agree to execute the same and any other agreement or deeds, and to pay the deposit when required." On the 11th of October, a letter of allotment of 100 shares was sent to the plaintiff, containing notice to pay the deposit on or before the 20th October, and adding—"I beg also to inform you, that scrip for the shares will be delivered to you in exchange for this letter and receipt, upon your executing the parliamentary contract and subscribers' agreement, which lies here for signature until further notice, and afterwards at such other places as will be hereafter notified." The plaintiff, who resided at Exeter, paid the deposit on the 20th October, and on the 3rd December the subscribers' agreement was sent to Exeter, and the plaintiff had an opportunity of executing it, but did not. It did not appear, however, that he was called upon to execute it, nor that any notice was given to him that the deed was at Exeter. The subscribers' agreement, which bore date the 15th of October, authorised the directors to take such measures and incur such preliminary expenses as they might think advisable, to increase or diminish the capital of the company, to extend the railway, or, if they should think fit, to abandon the undertaking. It also specially authorised them to apply the deposits in payment of the expenses, and the deposits were so applied, but the undertaking was abandoned in consequence of the allottees not furnishing sufficient funds to carry it on.

and without any fraud or misconduct on the part of the managing committee. On the winding up of the concern, a committee of inquiry had been appointed, and the defendant, one of the managing committee, handed to them a minute book, containing an entry made by the secretary of the company in the course of his duty, of a certain resolution proposed by the defendant at a meeting of the committee of management. In an action by the plaintiff to recover back his deposit as upon a failure of consideration, the learned Judge ruled, that this evidence was evidence against the defendant, and he told the jury that, if they thought the project had been abandoned as abortive at the time the action was commenced, they should find for the plaintiff. On a bill of exceptions to this ruling,—*Held*,

1st, that the learned Judge was right in admitting the resolution in evidence.

2ndly, that the direction of the learned Judge was correct, since the plaintiff's claim was founded on the failure of the project, and his want of consent or acquiescence in the application of the money, and there was no evidence of consent or acquiescence besides the letters and the subscribers' agreement; and, the latter document not being in existence at the time of the plaintiff's application for shares, he was, by his letter of the 6th October, subjected only to the terms of such an agreement as the directors might properly call on him to execute, and that the agreement in question was not of that description, inasmuch as it purported to give the directors larger powers than the 7 & 8 Vict. c. 110, s. 23, authorised them to assume; and also purported to enable them to expend the deposits in the exercise of such excessive powers. *Ashpitel v. Sercombe*, 5 Exch. R. 147.

#### ATTACHMENT.

*For non-payment of instalment under award, where doubt exists.*—An action against a railway company was referred to arbitration. The arbitrator made his award on the 28th of April, 1849, directing the company to pay to the plaintiff a certain sum, by four instalments, on the 12th of June and 26th November, 1849, and on the 26th of February and 26th of May, 1850. On the 4th of May, 1849, the Vice-Chancellor made an absolute order for the dissolution and winding up of the company, under the 11 & 12 Vict. c. 45, and an official manager was duly appointed. On the 1st of August, 1849, the 12 & 13 Vict. c. 108, passed, declaring that the former Act should not apply to railway companies. Under these circumstances, the Court refused to make an order upon the company (upon a service and demand upon the secretary and one of the directors), to pay the instalments which had become payable on the 12th of June and 26th of November, 1849, considering the matter to be too doubtful to be disposed of on a summary application.

*Quere*, whether an attachment, or an order, can be obtained on non-payment of an instal-

ment. *Mackenzie v. Sligo and Shannon Railway Company*, 9 C. B. 250.

#### BANKRUPT SHAREHOLDER.

*Acceptance of shares by assignees.—Claim for calls not barred by certificate.*—The defendant, a railway shareholder, became bankrupt on the 8th February, 1848. On the 18th of the same month a call was made, and three other calls were subsequently made. On the 24th of April, 1848, the defendant obtained his certificate. The scrip was handed over to the assignees, and some correspondence took place between the trade assignees and the official assignee, in the course of which the former sent the latter a statement of the bankrupt's property, comprising in it the probable value of the shares in question, and containing an estimate of the amount forthcoming to work the fiat and pay dividends. The trade assignees subsequently wrote to the official assignee, suggesting the propriety of selling the shares. The shares, however, continued in the possession of the assignees: *Held*,

1st, that there was no evidence of an acceptance of the shares by the assignees.

2ndly, that the property in the shares continued in the bankrupt, the claim not being barred by his certificate, inasmuch as it was not provable as a debt due *in futuro* under the 31st section of the 6 Geo. 4, c. 16, or as a debt due on a contingency, within the meaning of the 56th section of that Act. *South Staffordshire Railway Company v. Burnside*, 5 Exch. R. 129.

Cases cited in the judgment: *Experte Barker*, 6 Ves., jun. 114; *Experte Marshall*, 1 Mont. & A. 124, 128, 156; *In re Willis*, 4 Exch. R. 530.

#### CALLS.

1. *When made in point of time.—Transfer of share.*—Under the Companies' Clauses Act, 8 & 9 Vict. c. 16, s. 22, a call of money on shares is made, in point of time, when the resolution to call is passed, not when notice of the call is given to the shareholder.

Therefore, by section 16, a shareholder cannot legally transfer his share after the passing of such resolution, without paying the call, though he has executed a deed of transfer before notice of the call was served upon him. *Regina v. Londonderry and Coleraine Railway Company*, 13 Q. B. 998.

2. *Payment by vendor before registration.*—S. sold railway shares, of which B., after immediate sales and without any privity with B., became purchaser; and S. transferred them to B. by deed. S., at the time of the sale by him, was registered owner, and so remained, B. not having registered. After the purchase by B., a call was made upon S., which S. was obliged to pay, under Stat. 8 & 9 Vict. c. 16, s. 15.

*Held*, that for such payment S. could not maintain an action against B. as for money paid to his use. *Seyles v. Blane*, 14 Q. B. 205.

3. *Registered shareholder. — Legality of agreement.*—Debt for calls on railway shares: Plea, that defendant was not shareholder: Issue thereon. A special verdict found that, by agreement of 21st July, 1847, between the directors of the railway company and defendant, he agreed to take all the unappropriated shares in the company, being 4,935, and to pay 4l. per share on the 15th August then next, and, meanwhile, to deposit securities to the amount of 20,000l.; and the company agreed that, "so soon as 15l. per share shall have been paid on the 4,935 shares, and that the company is in a position legally to do so, they shall deliver" to defendant mortgage debentures of the company payable three years after date, and bearing five per cent. interest, for 24,675l., being at the rate of 5l. per share. At a meeting of the shareholders, on the 10th August, 1847, convened for the purpose, the agreement was confirmed by the shareholders, and the shares were registered to defendant with his consent. The call, on which the action was brought, was made in December, 1847.

*Held*, that the production of the register made a *prima facie* case that defendant was a shareholder, which case was not rebutted by anything in the other evidence; that, even if the stipulation to deliver mortgage debentures in consideration of the shares taken were illegal, this would be no defence, as the action was not on the agreement, and the agreement had been, in part, executed by the transfer of the shares, which transfer took effect in *presenti*. But

That the stipulation to deliver such debentures, as soon as the company should be in a position legally to do so, was not illegal. *West Cornwall Railway Company v. Mowatt*, 15 Q. B. 521.

4. *Infancy at time of purchase of shares. — "Contract," meaning of.*—To a declaration for railway calls, the defendant pleaded, that, at the time when he first became the holder of the shares, and at the time of his making the contracts, by force of which the debts, causes of action, and liabilities in the declaration mentioned, accrued to the plaintiff, and were incurred by the defendant, and at the time of his making and entering into the contracts, by force of which, the plaintiffs claim to be entitled by law to make the call upon the defendant, as in the declaration alleged, the defendant was an infant within the age of 21 years. Replication, that the defendant, at the time when he first became the holder of the shares, and at the time of his making the contracts in the plea mentioned, was of the full age of 21 years. It appeared at the trial, that the defendant was the purchaser of the shares in question whilst he was an infant, and that, after he was of full age, a call was made: *Held*, that the term "contract," meant the contract by which the defendant became a shareholder, and not the obligation to pay the calls, under the 8 & 9 Vict. c. 16, s. 21; and, consequently, the plea was proved by evidence of his in-

fancy, at the time of the transfer to him of the shares.

*Quære*, whether the word "contract" being so construed, the plea was an answer to the action. *Birkenhead, Lancashire, and Cheshire Junction Railway Company v. Pilcher*, 5 Exch. R. 24.

5. A declaration for calls, stated that the defendant, at the time of the making of the calls thereafter mentioned, *was and still is* the holder of divers shares, to wit, &c., in the company called, &c., and before the commencement of the suit *was and still is* indebted to the company in a large sum, to wit, &c., in respect of two calls upon the said shares, *therefore duly made by the said company*, each of the said calls being, &c.; whereby and by reason of the said sum of, &c., being wholly unpaid to the said company, an action hath accrued to the said company by virtue of the special Acts of Parliament, viz., the Companies' Acts, (incorporating the Companies' Clauses' Consolidation Act, 8 & 9 Vict. c. 16): *Held*, on special demurrer, that the declaration was good, and that it sufficiently complied with the form given by the 8 & 9 Vict. c. 16, s. 26. *East Lancashire Railway Company v. Croxton*, 5 Exch. R. 287.

Case cited in the judgment: *Midland Great Western Railway Company of Ireland v. Evans*, 4 Exch. R. 649.

6. *Payable by instalments.*—A call made payable by instalments, under the 8 Vict. c. 16, is good; but an action of debt will not lie for the recovery of an instalment, before the time for the payment of all the instalments has arrived. *Ambergate, Nottingham, and Boston and Eastern Junction Railway Company v. Coulthard*, 5 Exch. R. 459.

And see *Companies' Clauses' Consolidation Act*, 2.

#### COMMITTEE.

*Actions against several persons on a joint liability.—Staying proceedings after payment by one.*—Costs.—B. brought separate actions against M. and H., two members of the committee of management of a railway company, for a debt from the company for which M. and H. were jointly liable, though different evidence was requisite to prove the liability of each. B. obtained a verdict against H.; M. had a verdict in his favour, but a rule for a new trial was in this case granted, after which M. paid the whole debt and the costs of the action against himself, which payment included a farther sum than that to which H. was liable.

*Held*, that a Judge's order, staying proceedings in the action of B. against H., before judgment had been signed, without payment of costs, was properly made. *Bailey v. Haines*, 15 Q. B. 533; *Baxter v. Bracebridge*, ib.

Cases cited in the judgment: *Newton v. Blant*, 3 C. B. 675; *Turner v. Davies*, note (1), 2 Wms. Saund. 148, a., 6th ed.

[To be continued.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 12, 1853.

## REGISTRATION OF ASSURANCES BILL.

### DEBATE ON THE SECOND READING.

LORD CAMPBELL imported into the debate upon the second reading of the Lord Chancellor's Bill for the Registration of Assurances, a tone and spirit somewhat foreign to the atmosphere of the House of Lords, and altogether unsuited to the gravity and importance of the subject under discussion. In this respect, the learned Lord Chief Justice's speech contrasts strikingly with the speeches of the Lord Chancellor and Lord Brougham, both of whom spoke forcibly in favour of the Bill.

The only opposition to the second reading came from Lord St. Leonards, who addressed the House of Lords, for the first time, upon a subject on which he was eminently qualified to form a judgment, and to which he had given as much attention and consideration, possibly, as any man now living. Lord St. Leonard's speech was a calm appeal to the understandings of those he addressed, which we have good reason to believe has been very imperfectly reported in the daily newspapers. It contained no personal allusion. No sinister motive was imputed to those who held opinions adverse to the speaker, but argument after argument was unfolded with the earnestness, sincerity, and confidence of a mind familiar with the question and entertaining no doubt as to the accuracy of its own conclusions. The answer of the Chief Justice was a lengthened sneer, mingled with ironical professions of deference and respect. Sir Edward Sugden, when he had no seat in Parliament, devoted a portion of his leisure to the publication of a pamphlet upon the question of registration,

in which the whole matter was discussed and in some sense exhausted. Lord Campbell does not endeavour to meet any of the arguments stated in Sir Edward Sugden's pamphlet, but it pleases him to think its publication a topic for not over refined ridicule. The pamphlet contains no "clap-traps," and does not find favour in the sight of the Chief Justice.

Lord St Leonards, having adverted to the fact, certainly most remarkable, if not conclusive, that the solicitors of Great Britain, although assured that the operation of the measure would increase the amount of their pecuniary remuneration in every future transaction connected with land, were nevertheless unanimous in disapproving of it, was met by Lord Campbell with the candid suggestion, that the solicitors, though "a most respectable body of men," were influenced on this occasion by an *esprit de corps* and by considerations of professional advantage at variance with their generally patriotic views; and then some forgotten work of the author of *Sylva* is referred to, *apropos des bottes*, because he speaks of "the lawyers and attorneys who sat in Parliament, as locusts who sought for means by which suits and frauds might be brought about." The singular good taste exhibited in this instance by the Lord Chief Justice was crowned by what he, facetiously termed, "an historical fact," in which the late lamented Sir Robert Peel is represented in a new character—insulting and disparaging the House of Peers. We copy from the newspaper report the anecdote so complimentary to the Hereditary Branch of the Legislature:—"I once," said Lord Campbell, "had the honour of sitting on a committee on copyhold tenure with the late Sir Robert Peel, where that distinguished man had shown himself a zealous reformer, as he was in every branch



of the law. He was anxious for the enfranchisement of copyholds, and the committee were unanimously of the same opinion with him; but, as I was walking away from the committee with him, Sir R. Peel said to me,—“We shall pass this bill in the Commons, but you will have great difficulty in getting it through the Lords, for the Lords are generally under the dominion of their stewards.” “I hope,” said Lord Campbell, “that your lordships are now emancipated, and that you will pass the Bill now before the house.”

It would, of course, be impossible to doubt the accuracy of the noble and learned “historian’s” recollection, but it does strike those who had the late Sir Robert Peel’s confidence, as somewhat extraordinary that an observation, so much at variance with Sir Robert Peel’s ordinary sentiments, should have been made to one who did not enjoy either the political or the private friendship of that distinguished statesman.

Passing from the temper and spirit of the debate to the substance of the Bill submitted to Parliament, we are not sorry to find it now admitted, that however it may affect large estates, it will inevitably increase the expense upon small transactions. Lord St. Leonards read a communication, bearing on this part of the question, received from Mr. Green, a solicitor at Bury St. Edmunds, which we make no apology for copying *in extenso*, as it puts the matter in a concise and practical point of view. We are indebted for this extract to the report published in the *Morning Chronicle* :—

“The counsel and eminent London solicitors, who alone appear to have been consulted on this subject, have little conception of the number and minuteness of the transactions with which the general practitioner is conversant, and of the effect which would be produced by the additional expense and delay of registration. These would not be proportioned to the amount, but would attach themselves without distinction on every transaction. A difference in the rate of registration fees can be a question of only a few shillings; the real burden lies in those multitudinous details which rest with the solicitor, and which will be exactly as troublesome in the smallest as in the largest transaction. It is important to exhibit the proportion of small and large transactions as ascertained by actual experience. I believe that the business of my firm represents rather a higher proportion than the average business of the kingdom, for, while the great London offices have many larger transactions, the great body of practitioners have fewer transactions above 500*l*. Yet an examination of upwards of 300

conveyances and 450 mortgages, transacted by my firm in the last three years, exhibits the following per-centage proportion :—

	Conveyances.	Mortgages.
3,000 <i>l</i> . and upwards . . .	3	4
From 2,000 <i>l</i> . to 3,000 <i>l</i> . . .	4	2
From 1,000 <i>l</i> . to 2,000 <i>l</i> . . .	9	10
From 500 <i>l</i> . to 1,000 <i>l</i> . . .	14	10
From 400 <i>l</i> . to 500 <i>l</i> . . .	9	12
From 300 <i>l</i> . to 400 <i>l</i> . . .	6	11
From 200 <i>l</i> . to 300 <i>l</i> . . .	19	12
From 100 <i>l</i> . to 200 <i>l</i> . . .	17	13
Under 100 <i>l</i> . . . . .	19	26
	100	100

It appears, therefore, that of conveyances 70 per cent., and of mortgages 74 per cent., are under 500*l*. I may add, that in 40 per cent. of the conveyances, and 98 per cent. of the mortgages, we were concerned for both parties. The prevalence of this practice diminishes so much the expense and delay that the increase of both, resulting from registration, will be out of all proportion to the present amount. In these cases, the cost of the conveyances under 500*l*. has been from 2*l*. to 7*l*., and of mortgages from 1*l*. to 6*l*., in proportion to the amount, exclusive of stamps. There is nothing in the proposed system of registration which will subtract 1*s*. from these minor conveyances and mortgages, and every proceeding under it will be an addition of labour and expense. I have carefully computed the expenses which must be incurred on every occasion, and cannot make them less than 5*l*. on every conveyance, and 4*l*. 10*s*. on every mortgage, exclusive of registrar’s fees, and assuming that printed forms, and every facility, will be provided. And in the case of a mortgage, there will be at least half the same expense incurred in clearing it from the register on its discharge; and these processes can never be waived, but must invariably be pursued in every transaction, great and small. But the expense, great as it is, will not be the only, or even the principal objection. A considerable and indefinite amount of delay must be occasioned. Delay in mortgage transactions is of great moment. Of the 70 per cent. of mortgages under 500*l*., I venture to say that half were prepared and executed within a week from the application for the money, and many of them on the same day. Equitable mortgages or memoranda with deposit of title deeds are invariably completed on the same day, and are commonly managed by bankers in the country without the interposition of a solicitor. This would now be impossible. In the case of mortgages and conveyances in general, the time occupied in searches and subsequent registration of the deed cannot be much less than 14 days.”

The information at our command rather leads to the conclusion, that Mr. Green, in this communication, has *understated* the

increase of expense and the injurious delay which the new system of registration would entail in all transactions connected with the transfer or mortgage of real property. Mr. Green's letter to Lord St. Leonards is liable to be misunderstood on another matter, on which it is most desirable no misapprehension should exist. "Eminent London solicitors who have been consulted upon the Bill," are referred to, in terms from which it might be inferred, that the Lord Chancellor's Bill was approved of and supported by this deservedly influential class. The measure, however, we will venture to state, finds as little support from the town as from the country solicitors. Undoubtedly, the establishment of a monster Register Office in London containing the deeds and mortgages of all the landed proprietors in the kingdom, would add considerably to the business of the large agency houses. But whatever Lord Campbell may think, this is not the principle or the spirit in which the question is regarded by solicitors in town or country. The interest of the client is, as it ought always to be, the primary consideration; and the "eminent London solicitors" are as much alive as their brethren in the country to the enormous expense and inconvenience which will arise from having the title deeds connected with every property, great and small, deposited in a public office in the metropolis. Without regard, therefore, to the narrow calculation, whether one class of solicitors may lose or gain something more or less than another class, the whole Profession are all but unanimous in condemnation of a measure, which experience convinces them, however it may effect the Profession, cannot fail to operate injuriously to the public. The opposition the Registration Scheme has received, and we trust will continue to receive, from the Incorporated Law Society, as well as from the provincial and local associations throughout the country, honourably illustrate the prevalence of the sentiment, consistently enforced in these pages, that the interests of the legal Profession and of the public are identical. In this instance the solicitor, who from professional acquaintance and habits, is more fully alive to the mischievous consequences of the proposed measure than the landholder or the purchaser, for the protection of their interests places himself in the front of the battle, utterly regardless of the consideration, that by this measure his own immediate and temporary profits may be in-

creased at their expense. The solicitor is sensible that any law which in its operation damnifies classes so important as the landed proprietor and the capitalist, must ultimately interfere injuriously with his personal prosperity, and, in defiance of sneers or slanders from those in high or in low places, he takes his stand *with his clients*.

The cordial concurrence and support the country solicitors continue to receive from their brethren located in the metropolis in opposing the Registration Bill, will not be without its uses in counteracting the mischievous efforts of those who, under the guise of friendship, but for the most paltry and selfish objects, seek to divide the Profession. The oft-repeated, but always unfounded insinuation, that the country practitioners are sacrificed by their town agents, now finds a practical answer.

Our readers will observe that the measure introduced by the Lord Chancellor, has been referred to a Select Committee, which includes all the Law Lords, except Lord St. Leonards. That it will pass through this ordeal without any fundamental changes may be safely predicted. No time should be lost in preparing and forwarding petitions against this Bill, which, it must not be overlooked, is supported by the whole strength of the Government.

## NEW TRIALS IN CRIMINAL CASES.

THE Bill submitted to the House of Commons by Mr. Butt, "to make further provision for the granting of New Trials in Criminal Cases," and which stands for a second reading on Wednesday next, the 16th instant, is intended to apply only to Ireland, but we make no apology for calling attention to its leading features. It is proposed by the first clause to enact, that in cases of treason and felony depending in the Court of Queen's Bench in Ireland, a new trial may be granted in the same manner as is now the practice in cases of misdemeanour; and when granted, the new trial is to proceed as if no former trial had taken place.

By subsequent clauses, it is proposed to provide, that the application for a new trial shall be made within the first six days of the ensuing Term, and that the Court in the first instance shall only grant a conditional order (or rule *nisi*), which is to specify the persons to show cause and the time to show cause, but it is declared that the rule is not to be made absolute by default of showing cause, so that the respon-

sibility is thrown upon the Judges of deciding whether there shall be a new trial, even when the parties supposed to be most concerned in sustaining the verdict, "make no sign." It is also proposed materially to limit the power of the Court to grant a new trial, by providing, that no application be made to set aside a verdict, on the ground that such verdict was against evidence, unless the Judge who tries the cause certifies that he is not satisfied with the verdict. It is also provided, that points reserved by the Judge are not to be the ground of application for a new trial.

To meet the objection, that the right to apply for a new trial would interfere with the ordinary course of justice, it is provided that sentence may be passed immediately after verdict, as at present, and that such sentence shall be in force until such verdict be set aside. But where the sentence is transportation, the Bill provides, that it shall not take effect until the time for applying for a new trial is passed; and that persons sentenced to death may petition the Lord Chancellor when the Court of Queen's Bench is not sitting, and that the Chancellor, upon such petition, may issue a commission, to review and examine the verdict and decide upon the application for a new trial. In cases in which a conditional order is discharged, execution is to proceed.

To meet another difficulty frequently suggested, it is proposed that evidence or testimony given at the first trial by a deceased or missing witness, may be received upon a new trial as evidence of the facts deposed to in such testimony; and it is also proposed, that in any trial for a capital offence, the Judge is to appoint a sworn reporter, whose notes may be used on an application for a new trial. The presence of the prisoner may be dispensed with upon the application for a new trial; and if the Court be equally divided, the verdict is to be set aside.

Such is the machinery by which it is proposed to effect a change of manifest importance in the administration of criminal justice. If the Bill upon its second reading meets the approval of the House of Commons, future opportunities will arise for observing upon its details. It is hardly to be denied that the proposition is deserving of further consideration.

## REPEAL OF THE ATTORNEYS' CERTIFICATE TAX.

MANY of our readers are aware of the very efficient steps which have been taken to impress on the attention of Members of the House of Commons, the grounds of the claim of the Profession to the remission of this unjust, and now intolerable impost. We believe that almost every Member of the House has received letters or petitions from the solicitors practising in the several districts which they represent. The London solicitors have also addressed not only their own representatives, but their friends and clients in Parliament.

The motion of Lord Robert Grosvenor, who has for so many Sessions ably and kindly, and with so much discretion and judgment, conducted the case, stood first on the list of business for Thursday, the 10th.

The motion was urgently opposed by the Chancellor of the Exchequer, but on a division the votes were :—

For the repeal . . .	219
Against it . . .	167

Leaving a majority of . 52

The Bill was accordingly brought in, and read a first time. The second reading will take place after the Easter holidays.

## NOTICES OF NEW BOOKS.

*A Treatise on the Proceedings of Election Committees, with an Abstract of the Acts relating thereto, and an Appendix.* By CHARLES FRERE, Esq., Barrister-at-Law. Westminster: Bigg and Sons, 1853. Pp. 192.

THIS is a concise and very valuable Treatise on the Procedure of Election Committees. The first part comprises an abstract of all the provisions scattered over several Statutes, and the enactments are fully given in an Appendix. The second part of the work states the course of proceeding of Election Committees in the usual order thereof. It is evident that great pains have been taken to ensure conciseness, accuracy, and facility of reference. It is strictly a *practical* work: the *Law of Elections* is left to Mr. Warren and other eminent text writers, who treat at large of the various Statutes regulating our whole system of Parliamentary Elections.

# NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

## STAMP DUTIES ON PATENTS FOR INVENTIONS.

16 VICT. c. 5.

Reciting 15 & 16 Vict. c. 83.

Sections 17, 44, 45, 46, and 53, and part of Schedule of recited Act repealed; s. 1.

Letters patent to be made subject to avoidance on non-payment of stamp duties expressed in Schedule to this Act annexed; s. 2.

Stamp duties mentioned in the Schedule to this Act to be payable; s. 3.

As to payment of stamp duties on letters patent for England, Scotland, or Ireland respectively; s. 4.

Duties to be under the management of the Commissioners of inland revenue; who are to provide the proper stamps for the purpose; ss. 5, 6.

Conditions of letters patent already granted under recited Act to be satisfied by payment of stamp duties, &c., under this Act; s. 7.

Power to Commissioners to purchase the indexes of existing specifications prepared by Mr. Woodcroft; s. 8.

As to the word "duplicate;" s. 9.

This Act and 15 & 16 Vict. c. 83, to be construed together; s. 10.

The following are the sections of the Act:—

An Act to substitute Stamp Duties for Fees on passing Letters Patent for Inventions, and to provide for the Purchase for the public Use of certain Indexes of Specifications. [21st February, 1853.]

Whereas it is expedient that the fees payable in respect of letters patent for inventions under the Patent Law Amendment Act, 1852, and mentioned in the Schedule to such Act, be converted into stamp duties: Be it enacted as follows:—

1. Sections 17, 44, 45, 46, and 53, of the said Patent Law Amendment Act, 1852, and so much of the Schedule to the said Act as relates to fees and stamp duties to be paid under the said Act, shall be repealed.

2. All letters patent for inventions to be granted under the provisions of the said Patent Law Amendment Act, 1852, (except in the cases provided for in the 4th section of this Act,) shall be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine, at the expiration of three years and seven years respectively from the date thereof, unless there be paid before the expiration of

the said three years and seven years respectively the stamp duties in the Schedule to this Act annexed expressed to be payable before the expiration of the third year and of the seventh year respectively, and such letters patent, or a duplicate thereof, shall be stamped with proper stamps showing the payment of such respective stamp duties, and shall, when stamped, be produced before the expiration of such three years and seven years respectively at the office of the Commissioners; and a certificate of the production of such letters patent or duplicate so stamped, specifying the date of such production, shall be endorsed by the clerk of the Commissioners on the letters patent or duplicate, and a like certificate shall be endorsed upon the warrant for such letters patent filed in the said office.

3. There shall be paid unto and for the use of her Majesty, her heirs and successors, for or in respect of letters patent applied for or issued under the provisions of the said Patent Law Amendment Act, 1852, warrants, specifications, disclaimers, certificates, and entries, and other matters and things mentioned in the Schedule to this Act, or the vellum, parchment, or paper on which the same respectively are written, the stamp duties mentioned in the said Schedule; and no other stamp duties shall be levied in respect of such letters patent, warrants, specifications, disclaimers, certificates, entries, matters, and things; and the stamp duty mentioned in the said Schedule on office copies of documents shall be in lieu of such sums as by the said Patent Law Amendment Act, 1852, are authorised to be appointed to be paid for such office copies.

4. Where letters patent for England or Scotland or Ireland have been granted before the commencement of the said Patent Law Amendment Act, 1852, or have been since the commencement of the said Act, or hereafter may be granted for any invention, in respect of any application made before the commencement of the said Act, letters patent for England or Scotland or Ireland may be granted for such invention in like manner as if the said Act had not been passed: Provided always, that in lieu of all fees or payments and stamp duties which were at the time of the passing of the said Act payable in respect of such letters patent as last aforesaid, or in or about obtaining a grant thereof, and in lieu of all other stamp duties whatsoever, there shall be paid in respect of such letters patent as last aforesaid on the sealing thereof stamp duties equal to one-third part of the stamp duties which would be payable under this Act in respect of letters patent issued for the United Kingdom under the said Patent Law Amendment Act, 1852, on or previously to the sealing of such letters patent as last aforesaid, and before the expiration of the third year and the seventh year respectively of the term granted by such letters patent for England, Scotland, or Ireland, stamp duties equal to one-third part of the stamp duties payable under this Act before the expiration

of the third year and the seventh year respectively of the term granted by letters patent issued for the United Kingdom under the said Patent Law Amendment Act, 1852, and the condition of such letters patent for England or Scotland or Ireland shall be varied accordingly.

5. The stamp duties hereby granted shall be under the care and management of the Commissioners of Inland Revenue; and the several rules, regulations, provisions, penalties, clauses, and matters contained in any Act now or hereafter to be in force with reference to stamp duties shall be applicable thereto.

6. The said Commissioners of Inland Revenue shall prepare stamps impressed upon adhesive paper, of the amounts following, that is to say, 2d., 4d., 8d., and 1s., to be used only in respect of the stamp duties on the office copies of documents and on the certificates of searches and inspections mentioned in the Schedule to this Act; such adhesive stamps of proper amounts to be affixed by the clerk of the Commissioners of Patents for Inventions to such office copies of documents and certificates of searches and inspections as aforesaid; and immediately after such affixing he shall obliterate or deface such stamps by impressing thereon a seal to be provided for that purpose, but so as not to prevent the amount of the stamp from being ascertained; and no such office copy or certificate shall be delivered out until the stamps thereon shall be obliterated or defaced as aforesaid.

7. The condition contained in any letters patent granted under the said Patent Law Amendment Act, 1852, and before the passing of this Act for making such letters patent void at the expiration of three years and seven years respectively from the date thereof, unless there be paid, before the expiration of the said three years and seven years respectively, the sums of money and stamp duties by the said Patent Law Amendment Act, 1852, required in this behalf, shall be deemed to be satisfied and complied with by payment of the like stamp duties as would have been required if such letters patent had been granted after the passing of this Act, and had been made subject to the condition required by this Act in lieu of the said condition therein contained; and the provision hereinbefore contained concerning the endorsement on the letters patent or duplicate, and on the warrant for the same letters patent, of a certificate of the production of the letters patent or duplicate properly stamped, shall be applicable in the case of such letters patent granted before the passing of this Act.

8. And whereas by the said Patent Law Amendment Act, 1852, the Commissioners are directed to cause indexes to all specifications heretofore or hereafter to be enrolled or deposited to be prepared in such form as they may think fit, which indexes are to be open to the inspection of the public: And whereas the ex-

isting specifications so directed to be indexed as aforesaid are in number 15,000 and upwards, and it would require some years to make indexes thereof on a proper arrangement and classification. And whereas Mr. Bennett Woodcroft has already made complete indexes of such specifications, which the Commissioners have examined and approved of, and it is expedient that such indexes be purchased for the use of the public:

It shall be lawful for the Commissioners, with the consent of the Commissioners of her Majesty's Treasury, to purchase the said indexes of the said Bennett Woodcroft for a sum not exceeding 1,000 pounds, and to pay the purchase-money for the same out of the monies in their hands which have arisen from fees received in respect of letters patent under the said Patent Law Amendment Act, 1852, and directed by the said Act to be paid into the receipt of the Exchequer; and after the purchase of such indexes the provisions of the said Act shall be applicable thereto as if such indexes had been prepared under the said recited enactment.

9. The word "duplicate" shall be construed to mean in this Act such letters patent as may be issued under the 22nd section of the Patent Law Amendment Act, 1852, in case of any letters patent being destroyed or lost.

10. This Act and the Patent Law Amendment Act, 1852, shall be construed together as one Act.

THE SCHEDULE OF STAMP DUTIES TO BE PAID TO WHICH THIS ACT REFERS.

	£	s.	d.
On petition for grant of letters patent . . . . .	5	0	0
On certificate of record of notice to proceed . . . . .	5	0	0
On warrant of law officer for letters patent . . . . .	5	0	0
On the sealing of letters patent . . . . .	5	0	0
On specification . . . . .	5	0	0
On the letters patent, or a duplicate thereof, before the expiration of the third year . . . . .	50	0	0
On the letters patent, or a duplicate thereof, before the expiration of the seventh year . . . . .	100	0	0
On certificate of record of notice of objections . . . . .	2	0	0
On certificate of every search and inspection . . . . .	0	1	0
On certificate of entry of assignment or licence . . . . .	0	5	0
On certificate of assignment or licence . . . . .	0	5	0
On application for disclaimer . . . . .	5	0	0
On caveat against disclaimer . . . . .	2	0	0
On office copies of documents, for every 90 words . . . . .	0	0	2

**SCHEDULE (B).**

**IN CHANCERY.**

**A. v. B.**

Take notice that this cause, the further consideration whereof was adjourned by the order of the \_\_\_\_\_ day of \_\_\_\_\_, was, on the \_\_\_\_\_ day of \_\_\_\_\_, set down for further consideration before his Honour the \_\_\_\_\_ for the \_\_\_\_\_ day of \_\_\_\_\_.

**C. D.**

To Mr.  
Solicitor for (the defendant).

IN the *London Gazette* of the 26th of February last, the following Fees of the Clerks of Assize as Associates on the Circuit, are fixed by the Lords of the Treasury with the approval of the Judges :—

In pursuance of an Act, passed in the Session of Parliament held in the 15th and 16th years of the reign of her Majesty, entitled "An Act to make provision for a permanent establishment of officers to perform the duties at Nisi Prius, in the Superior Courts of Common Law, and for the payment of such officers, and the Judges' clerks, by salaries, and to abolish certain offices in those Courts," we, the undersigned, being two of the Commissioners of her Majesty's Treasury, have caused the under-mentioned table of fees to be prepared, specifying the fees proper to be demanded and taken on the Circuits by the officers and clerks at Nisi Prius, belonging to the Superior Courts of Common Law, namely:—

£ s. d.

U 5

**IN CHANCERY.**

I request that this cause, the further consideration whereof was adjourned by the order of the \_\_\_\_\_ day of \_\_\_\_\_, may be set down for further consideration before his Honour the \_\_\_\_\_

**C. D.**

**Solicitor for (the plaintiff).**

ingrossing and copying, at the rate of 4d. per folio, from plaintiff and defendant, each . . . 0 10 0  
 Attending any Court, or otherwise with any record or other proceeding, under writ of subpoena or order of Court, per day . . . 1 0 0

And no other fees than those before-mentioned shall be demanded or taken by the associates, marshals, clerks, criers, or other persons, performing any duties at Nisi Prius on the Circuits, but all such other fees are hereby abolished.

Given under our hands at the Treasury Chambers, Whitehall, this 23rd day of February, 1853.

W. E. GLADSTONE and ALFRED HERVEY,  
 Two of the Commissioners of her Majesty's Treasury.

We, the undersigned, Judges of the Superior Courts of Common Law, do settle, allow, and sanction the before-mentioned table of fees, prepared by the Commissioners of her Majesty's Treasury, and we do hereby establish the same, under the provisions of the aforesaid Act of Parliament.

CAMPBELL, Lord Chief Justice of the Court of Queen's Bench.

JOHN JERVIS, Lord Chief Justice of the Court of Common Pleas.

FREDERICK POLLOCK, Lord Chief Baron of the Court of Exchequer.

W. H. MAULE, T. N. TALFOURD, and C. CROMPTON, Judges of the Superior Courts of Common Law.

The before-mentioned table of fees having been sanctioned and allowed by the Lord Chief Justices, the Lord Chief Baron, and other Judges, as required by the before-mentioned Act of Parliament, we do hereby order that the said table of fees be inserted and published in the *London Gazette*.

Treasury Chambers, Whitehall, the 24th day of February, 1853.

W. E. GLADSTONE and ALFRED HERVEY,  
 Two of the Commissioners of her Majesty's Treasury.

## LAW-CONFOUNDING SOCIETY.

*To the Editor of the Legal Observer.*

MR. EDITOR,—Your kind reception of my communication of the 19th of November last, encourages me to report to you some recent proceedings of some members of this Society towards carrying out their pious design of demolishing the law of England only because they do not understand it, and despair of earning an honest and honourable livelihood by the practice of it.

The Society, I should premise, consists as well of laymen as of that distinguished trading fraternity, designated in my former letter as barristers of seven years' standing.

The poor unlearned laymen, who delight in the several useful occupations of tailors, grocers, brewers, and apothecaries, are pleased with their companionship, witless that they may be the next victims of the free trade game they are playing, while the seven years' barristers, acting upon the approved French principle that "*Bâtir est beau, mais détruire est sublime*," are themselves reckless of consequences, having nothing to lose, and by possibility something to gain in the scramble.

Accordingly, at the last meeting of this motley Society, the subject proposed was the construction of a scale of fees fitting for the remuneration of attorneys on the basis of the suggestion of a noble Lord, that 300*l.* a year was the sufficient income to which any attorney should be entitled.<sup>1</sup>

After debate, it was determined that a bill should be prepared and submitted to Parliament restricting attorneys from charging more to their clients for copies of deeds and pleadings, &c., than was actually paid by them to their stationers, and that Commissioners should be appointed (being of course barristers of seven years' standing), at salaries of 2,000*l.* per annum, to ascertain the disbursements incurred for red-tape, pounce, and stationery, with power to employ an accountant to determine the fractional proportion these and the *minor* articles of rent and clerks' salaries might bear to the hitherto allowed rate of charge, and to reduce the latter accordingly.

Upon this, it was suggested by one more compassionate than the rest, that coals and candles should be included in the estimate; this was partially conceded with the drawback of a clause providing that no attorney should be permitted to have offices in Lincoln's Inn or the Temples, but might remain for a time on sufferance in Gray's Inn, and of right in Lyon's Inn and the other Inns of Chancery.

The meeting was involved in much admired disorder on an apprehension being entertained and expressed by the laymen, that a similar inquisition might be applied to their respective trades, and that the brewer and the apothecary might be called upon to produce their chemists

<sup>1</sup> It does not exactly appear on what occasion or by what noble and learned Lord this liberal award of professional income was made, but it is supposed to have emanated from one of the numerous ex-Chancellors, the amount of whose *sinecure* pensions contrast in high relief with the degrading standard of income so allotted to the *laborious* attorney.

and druggists' bills; upon this a tumult arose and much confusion ensued in the confounding society, but the seven years' barristers prevailed, and the resolutions were carried accordingly and ordered to be printed, though the infliction of causing them to be read is as yet happily out of their control.

Be it known, however, to your readers that this is not the rod adverted to in my former letter as likely to be forthcoming; it is still in pickle, reserved for more doughty disputants and tougher weapons than those wielded by the flimsy and simple Bar-graduates of seven years' standing.

I might add the astounding fact that this Society has on its minutes the heads of a bill for abolishing the nomination of all friendly and family trustees in settlements, by the substitution of official trustees (barristers of seven years' standing), to be remunerated by a moderate per-centage on rents and dividends received. I remain, sir, your humble servant,  
M. M. M.

*Athenæum*, 10th March, 1853.

## MASTERS EXTRAORDINARY IN CHANCERY.

THE following letter has been addressed by the Metropolitan and Provincial Law Association to Lord St Leonards, in reference to his Lordship's reported observations in delivering judgment in the case of *John Smith (of Birmingham)*, in November last:—

"MY LORD,—Your Lordship is reported in the daily papers of the 13th November last, to have made the following observations in delivering judgment, *In re Smith*, a solicitor.—'In compliance with orders to that effect letters had been written to 4,430 persons, who appeared as Masters Extraordinary in Chancery, calling on them to show by what authority they exercised their office, and for the production of their certificates. Answers had been received from no more than 2,486 of the number. His Lordship now knew something more of these gentlemen, and would have them a little better under control than they had hitherto been.'

"From this it might be inferred, that your Lordship considered that the Masters Extraordinary of the Court had been wanting in proper respect in not answering a communication of your Lordship's on the subject of their authority to exercise their office. Several of those gentlemen, therefore, who are members of this Association, have requested the Committee to inquire into the matter, and, if possible, to remove any erroneous impression of your Lordship's upon the subject.

"These gentlemen feel that it is due, both to your Lordship and to themselves, that the

matter should be inquired into; as, on the one hand, they would be much pained that your Lordship should think them wanting in respect towards yourself, and, on the other hand, they do not doubt that if any mistake has been made, it will be your Lordship's wish to have it set right.

"The Committee have accordingly put themselves into communication with the general body of their provincial members, who include several hundreds of the leading solicitors in all the principal towns in the kingdom; and the result is, that they have not been able to find one solicitor who has received or even heard of any such circular as that mentioned by your Lordship, and they have received letters to this effect from Masters Extraordinary in upwards of 40 towns in all parts of England.

"They have, however, learned, that in July last, an order of your Lordship's was inserted in the *London Gazette*, requesting 'all Masters Extra to transmit to the principal secretary of the Lord Chancellor, on or before the last day of August, a statement in writing mentioning their names, their place of residence, their actual occupation, and the date of their appointment.'

"The *London Gazette* is very seldom seen, and still more seldom read, even by solicitors; and if that had been the only notice they had received, it is probable that the order would not have been seen by one in a hundred of the Masters Extra, instead of its being complied with, as it was, by considerably more than half of the entire number.

"The order was copied into the three principal Law Papers—the *Jurist*, the *Legal Observer*, and the *Law Times*. The Committee have also ascertained that it was in several instances mentioned to provincial solicitors by their London agents, and by these means a considerable number of Masters Extra became aware of it, and made the desired return; but many of the gentlemen with whom the Committee have now been in correspondence upon the subject, state that they had heard nothing whatever about it until they received the first communication from the Committee.

"Under these circumstances the Committee have felt it their duty to put your Lordship in possession of the real state of the matter, and trust that your Lordship will feel satisfied that the imperfect return obtained to your Lordship's order did not arise from any inability on the part of those to whom it was addressed to make the return; or from any want of a proper respect to the order made by your Lordship; and they earnestly hope that when an opportunity occurs your Lordship will relieve the members of the Profession from the erroneous imputation which your Lordship's reported observations are calculated to convey.

"I have the honour to be,

"My Lord,

"Your Lordship's obedient servant,

"WILLIAM SHAEN, Sec.

"8, Bedford-row, Feb. 16th, 1853."

No doubt it must be satisfactory to his



Lordship to learn that the Profession have not, in point of fact, been guilty of slighting any communication made to them by the Lord Chancellor.

## MANCHESTER LAW ASSOCIATION.

### ANNUAL DINNER.

THE annual dinner of the Manchester Law Association took place on February 7th last. There were between forty and fifty gentlemen present; amongst whom were Mr. John Barlow, president of the Association, in the chair; the Mayors of Manchester and Salford; and Messrs. S. Heelis, G. Thorley, C. Gibson, J. Street, E. Worthington, R. B. B. Cobbett, S. Fletcher, T. T. Bellhouse, F. Robinson, N. Earle, P. Bunting, R. Radford, T. L. Rushton, of Bolton, &c.

After the usual loyal toasts had been given, the *Chairman* rose to propose "Prosperity to the Manchester Law Association." To the members of the Association their objects were well known, but as the strangers who were present might not be so well acquainted with them, he would briefly state what they were. This Association was not founded upon any selfish views, or upon class principles, on the part of the Profession, but upon the broad basis indicated by its motto, "*Fiat justitia.*" The unpaid services of an intelligent, painstaking body of professional men had for the last fourteen years been directed towards protecting the public of this immediate neighbourhood from the malpractices and designs of those pests to society, who, under the cloak of the law, brought it into discredit, whilst they fattened on the fruits of their villany at the expense of the respectable and honourable practitioner. The same body had, without ostentation and without reward, during a like period watched over the numberless bills that had passed through Parliament—bills affecting deeply the interests of the public,—and their energies had been cheerfully devoted to the protection of those interests. During the past year many amendments had been suggested by this Association, in various bills—particularly the Common Law Procedure Bill—the Sutors in Chancery Bill—the Law of Wills Amendment Bill—the County Court Extension Bill—and the Law of Patents Amendment Bill, in order to render the working of the bills practically more efficient and advantageous to the public. During the past year a disputed question, arising out of the last Stamp Act, upon which this Association took a different view from the Commissioners of Inland Revenue, has been practically settled by means of the efforts of this Association, and has effected a pecuniary saving to the public which in course of time would be very considerable. Whilst thus engaged, the efforts of this body had also been directed in promoting the observance among the Profession of a right-minded and honourable conduct towards

one another. One other topic he had to refer to, and he undertook it as a matter of duty. One of the vocations of this Association was to watch over the administration of the laws in this district,—and if it should happen that through the eccentricities or other failings of a Judge, or through unseemly dissensions in any Court, the interests of the commercial public should suffer, it would become necessary for this Association to follow the example of Liverpool on a recent occasion. And he thought the funds of the Association and the energies of the Committee could not be applied to a better object than in attempting to obtain a removal of an evil so much to be complained of.

Mr. G. Thorley, in responding to the toast of the "Manchester Law Association," said, he could not forbear congratulating its members on the extended influence and elevated position to which it had attained, as well in their own as in distant localities, and in the metropolis itself—a position which was accompanied by an increase in the number of its members, in its means, and in its efficiency; and if not by an increase, at least by a continuance of that public sympathy and countenance in its ends and its objects, so well exemplified by the presence of the two chief magistrates of their important boroughs, who had again honoured them by their society, and who might aptly be said to represent the sentiments, the feelings, and intelligence of the large and influential municipalities over which they presided. And if it were asked how this had been accomplished, he believed the true answer would be found to be, because the Association had, in all its acts and proceedings, maintained in its integrity that fundamental axiom with which it was originated, that the interests of the public and the interests of the Profession were identical and the same. That whether the exertions of their branch of the Profession had been bestowed in obtaining wise and well-considered Law Reforms, or in opposing mischievous measures of legislation (and they had been frequent and laborious), or in obtaining the abandonment of fiscal laws, which would have had the effect of imposing stamp duties exclusively upon the landowners of Manchester and its immediate neighbourhood—or in bringing courts of justice into their own county, to their own doors, or whether in opposing, and successfully opposing, the passing of a measure which would have created a monstrous centralization registration office for deeds in London, with all its attendant staff of placemen and officers, and which would have compelled every purchaser of land to be at the expense of two conveyances where one only is necessary, and each landowner's principal title deeds, however small the property, to be sent to London with all its attendant inconvenience and expense;—in all these and similar measures it had been manifest that the public interest was a main object of their exertions, and which by their success had been secured—and it was gratifying to reflect that those shafts of

calumny and slander, which a short time ago were so unsparingly hurled at their branch of the Profession by those whose measures they had caused to be rejected, or whose attempts to mislead the Legislature and the public they had succeeded in preventing, had either fallen impotent and harmless, or "returned to plague th' inventors." One of these slanders, it would be remembered, was that the Legal Profession was really opposed to all reforms or changes in the law, and anxious only for their own interests to keep every thing in its present state. For instance, it was wished that the public should believe the Profession was not disposed to diminish the delays and expense of the Courts of Chancery, but preferred continuing a state of things which absorbed from themselves and their clients large fees, and the use of voluminous proceedings; and which very frequently resulted, at the end of a long chancery suit, that if they, like their mercantile friends, took an accurate calculation of the interest on the outlay of fees and capital expended, there would, after years of labour, be a very contemptible figure, if any, on the profit side of the account. But with reference to their part in these reforms, and of the Court of Chancery especially, what, in reality, were the facts? Why, that for the last five or six years their branch of the Profession had been incessant in urging the adoption of the reforms of abuses, which, so long as they were suffered to exist, not only were attended with large unnecessary outlay, expense to their clients and themselves, but rendered chancery proceedings unpopular and odious to those who were unfortunate enough to be dragged into them, and directly operated injuriously to the interests of the Profession, by the determination of hundreds to submit to injustice and loss rather than undergo the ordeal of applying to such a tribunal.

[To be continued.]

## NOTES OF THE WEEK.

### REGISTRATION OF ASSURANCES.—LIEN FOR COSTS.

A correspondent says, from a perusal of the Abstract of the Lord Chancellor's Registration of Assurances' Bill, given in our last Number, he concludes that *Liens* upon Deeds of Conveyance will be no longer available, since from their very nature, they are incapable of registration, unless the client allow his solicitor to register, so as to preserve his security for costs.

### PUBLIC PROSECUTOR IN CRIMINAL CASES.

Mr. Justice *Erle*, on March 5th, while sitting at Winchester, expressed himself strongly in favour of the appointment of a public prosecutor who might be directed by the Judge to take proceedings against persons who had evidently given false testimony, in order that a stop might be put thereto.

### LAW APPOINTMENTS.

Mr. *Pickering* has been appointed Recorder of Pontefract, in the room of The Honourable Benjamin Boothby, appointed second Judge of the Supreme Court of Adelaide, South Australia.

Mr. *John Blakeney* has been appointed Crown Solicitor for Galway, in the room of Mr. James Blakeney, retired.

The Queen has been pleased to appoint *Charles Baillie*, Esq., Advocate, to be Sheriff of the shire or sheriffdom of Stirling, in the room of Robert Handyside, Esq., resigned.—From the *London Gazette* of 4th March.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

- March 5.—*In re Fussell*—Stand over.  
 — 5.—*Storrs v. Benbow*—*Cur. ad. vult.*  
 — 5.—*In re Bedford Charities*—Order for transfer to paper of Vice-Chancellor Wood.  
 — 5.—*In re Collislon*—Stand over.  
 — 5.—*Horsfield v. Ashton*—Leave to set down for hearing by full Court.  
 — 5.—*Lawrence v. Baldwin*—Order for re-hearing by consent.

### Lords Justices.

*Sibbald v. Lawrie*. March 8, 1853.

JURISDICTION IN EQUITY IMPROVEMENT ACT.—INTERROGATORIES FOR PLAINTIFF'S EXAMINATION.—LEAVE TO FILE.

Leave given to a defendant to file interrogatories under the 15 & 16 Vict. c. 86, s. 19, for the examination of the plaintiff, al-

though the time had not expired for excepting to his answer, but at the risk of having them taken off the file, with costs, if the answer proved insufficient.

THIS was a motion on behalf of the defendant, for leave to file interrogatories in this case under the 15 & 16 Vict. c. 86, s. 19, upon appeal from the decision of Vice-Chancellor *Stuart*. It appeared that the time had not expired for the plaintiff to except to the answer.

*Follett* in support.

The *Lords Justices* said, that leave would be granted, but that it would be at the risk of having the interrogatories taken off the file, with costs, if the answer were found insufficient.

March 3.—*Heward v. Wheatley*—Reference back to the Master.

— 3.—*Williams v. Williams*—Part heard.

March 4.—*Derbishire v. Home*—Decree from Vice-Chancellor Turner dismissed, with costs.

— 5.—*Fennell v. Roy*—*Cur. ad. vult.*

— 7.—*In re Railway Company*—Leave refused to set down motion under the Winding-up Acts, instead of proceeding in the first instance before Vice-Chancellor Kindersley.

— 7.—*Official Clearance of the Grand Trunk or Stafford and Peterborough Union Railway Company v. Brodie*—Motion to discharge order of Vice-Chancellor Wood fixed for the next seal.

— 4, 5, 8.—*In re Mostyn, ex parte Griffith*—Reference back to Mr. Commissioner Perry, and motion for leave to appeal to House of Lords stand over.

— 8.—*Turner v. Blamire*—Part heard.

### Master of the Rolls.

*In re Henland.* Feb. 24, 1853.

#### MARRIAGE SETTLEMENT.—POWER TO APPOINT NEW TRUSTEES.—PRACTICE.

*Provisoes were contained in two marriage settlements, settling respectively the real and personal estates of a lady on certain trusts, for the appointment of new trustees. The Court ordered the appointment of a new trustee as to both the settlements, on an affidavit of his fitness, and upon his written consent to act.*

A SETTLEMENT had been executed on the marriage of Mr. and Mrs. Henland, of her freehold property, and also another settlement assigning her personal property to trustees. There was a power to appoint new trustees in both settlements. This application was now made for the appointment of a new trustee as to both the settlements.

The *Master of the Rolls* said, a trustee would be appointed on an affidavit of his fitness, and his written consent to act.

March 3.—*Blakeney v. Dufaur*—Bill dismissed with costs.

— 2, 3, 4.—*Rochdale Canal Company v. King*—*Cur. ad. vult.*

— 4, 5.—*Askham v. Barker*—*Cur. ad. vult.*

— 5.—*Gear v. Gear*—Claim dismissed with costs.

— 5.—*Dalby v. Nichols*—Decree in administration suit.

— 7.—*Bateman v. Wyatt*—Order for account.

— 8.—*Richards v. Scarborough Market Company*—Injunction continued.

### Vice-Chancellor Kindersley.

*Ellison v. Hector.* March 2, 1853.

#### CREDITORS' SUIT.—GENERAL CHARGE OF ESTATES WITH PAYMENT OF DEBTS.

*A testator, after directing the payment of his debts and funeral and testamentary expenses, devised his real estates to his wife for life, with remainder to his son, in tail*

*male, remainder over to his first and other sons successively, in tail male, and directed his trustees, upon his death, in such manner as counsel should advise, to convey the residue of his real and personal estate, subject and charged and chargeable as aforesaid, upon certain trusts. The testator purchased real estates after the date of his will: Held, that they were generally charged with payment of his debts with the devised estates.*

THE testator, Mr. Hammond, by his will dated in September, 1820, after directing the payment of all his debts and funeral and testamentary expenses, devised his real estate to his wife for life, with remainder to his son for life, remainder to his first and other sons successively, in tail male, and directed his trustees after his death, in such manner as counsel should advise, to convey the residue of his real and personal estate, subject nevertheless, and charged and chargeable as aforesaid, upon the trusts therein-mentioned. It appeared that the testator had purchased certain estates after the date of his will, and a question was raised in this creditors' suit, whether the devised or the descended estates were first applicable to the payment of the debts.

*Follett and Kinglake* for the plaintiffs, bond creditors; *Baily and J. Stevens* for mortgagees; *Shapter* for the devisees; *Swinburne* for the heir-at-law.

The *Vice-Chancellor* said, that the real estate was generally charged with payment of the debts, and directed inquiries at Chambers with respect to the bond debts.

March 3.—*Barnard v. Roberts*—Annuities held payable out of annual income.

— 3.—*Widdicombe v. Muller*—Judgment in construction of will.

— 5.—*Collett v. Newnham*—Exception to Master's report overruled.

— 7.—*Attorney-General v. Blackburn*—Stand over.

— 8.—*In re Marylebone Joint Stock Banking Company*—Certificate of Master approving of compromise set aside.

### Vice-Chancellor Stuart.

*Powell v. Merrett.* March 7, 1853.

#### WILL.—LAPSED BEQUEST.—RIGHT OF CROWN AS AGAINST EXECUTOR.

*A testator gave all his real and personal estate to his wife and the defendant, their executors, administrators, and assigns, on trusts for conversion and investment, and to pay the income to her for life, and after her decease to stand possessed of the residue of his property, as to one-half as his wife should by will appoint, and in default of appointment to her executors and administrators. The wife predeceased the testator, who it appeared was illegitimate: Held, that the Crown was entitled to the moiety of the personal estate which lapsed by the wife's death.*

THE testator, William Powell, by his will, dated in August, 1822, gave all his real and personal estate to his wife and the defendant, John Merrett, their executors, administrators, and assigns, in trust to convert and invest the same, and to pay the income thereof to his wife for her separate use for life, and at her death in trust to stand possessed of his residuary real and personal property, as to one-half, for such persons as she should by will appoint, and in default of such appointment to her executors and administrators. It appeared that the testator's wife predeceased him, and that he had no next of kin or heir, being an illegitimate child. The cause now came on upon further directions.

*Russell* and *Renshaw* for the defendant contended he was entitled beneficially to such moiety of the personal estate, citing *Russell v. Clowes*, 2 Coll. 648.

*Wickens*, for the Crown, contra.

*Wigram*, *Bazalgette*, and *Briggs*, for other parties.

The Vice-Chancellor said, that in accordance with the decisions of *Middleton v. Spicer*, 1 Bro. C. C. 201, and *Taylor v. Haygarth*, 14 Sim. 8, the Crown was entitled to the moiety of the personal estate which lapsed by the wife's death.

March 3.—*Pearson v. Goulden*—Decree for account of tithes of hay.

—4.—*Freer v. Hesse*—Decree for specific performance of contract.

—4.—*Watson v. Marston*—Exception overruled to Master's report.

—8.—*Great Northern Railway Company v. South Yorkshire and River Don Railway Company*—Arrangement come to.

#### Vice-Chancellor Wood.

*Cartwright v. Cartwright*. March 5, 7, 1853.

HUSBAND AND WIFE.—PROVISO IN MARRIAGE SETTLEMENT IN CASE OF SEPARATION.—CLAIM.

In a marriage settlement was contained a proviso, that in case a separation should take place between the parties, by reason of any disagreement or otherwise, the rents and profits of the settled estates should be paid to the husband. It appeared a decree was made by the Ecclesiastical Court for a divorce *à mensâ et thoro*, on the ground of adultery by the husband: Held, dismissing with costs a claim by the husband, for payment to him of the rents and profits, that he could not take advantage of his own misconduct.

Quere, also whether such a proviso is valid, and whether a Court of Equity could give effect thereto.

It appeared that upon the marriage of the plaintiff and the defendant, in July, 1839, it was provided, that in case a separation should take place by reason of any

disagreement or otherwise between the plaintiff and his wife, after the solemnization of the marriage, the rents and profits of the estate settled thereon should be paid to the plaintiff. The defendant had left the plaintiff's house in 1846, with her mother, by his consent, in consequence of the conduct of his father, and in 1850, a decree had been obtained by the wife in the Ecclesiastical Court for a divorce *à mensâ et thoro*, upon the ground of adultery by him, on the defendant's instituting proceedings for a restitution of conjugal rights.

*Russell* and *Terrell* now appeared in support of this claim, for payment of such rents and profits on their separation.

*Daniell* and *Amphlett* for the defendant, contra.

*C. M. Roupell* and *Bowring* for the trustees.

The Vice-Chancellor said, it was unnecessary to decide as to the validity of the provision in question for the future separation of the husband and wife, or whether any effect could be given thereto, as the case must be determined on the position of the parties. It was clear the separation in 1846 was not such as was referred to by the settlement, which must refer to a permanent separation, either by contract or by the effect of proceedings in the Ecclesiastical Courts. And in respect to the separation in 1850, there was a justifiable cause, and the husband could not insist in equity on his title to the rents which he acquired by his own misconduct, and the claim must therefore be dismissed with costs.

March 2.—*Montaya v. Paris*—Injunction granted to restrain execution.

—2.—*Forbes v. Richardson*—Arrears of annuity held payable out of annual profits of estate.

—2.—*In re Cooper*—Legacy held lapsed and to fall into residuum.

—4.—*Official Manager of the Grand Trunk or Stafford and Peterborough Railway Company v. Brodie*—Order to set aside subpoena for costs against official manager and to quash attachment.

—3, 5.—*Morier v. Budd*—Judgment on exceptions to Master's report.

—5.—*In re Stule's Trust*—Petition dismissed, costs out of fund.

—8.—*Earl of Lindsey v. Great Northern Railway Company*.—Part heard.

—8.—*Havens v. Middleton*—Cur. ad. vult.

#### Court of Queen's Bench.

*Tallis v. Tallis*. Nov. 16, 1852; Jan. 12, 1853.

COVENANT ON DISSOLVING PARTNERSHIP.—RESTRAINT OF TRADE.—VALIDITY OF.

Upon a dissolution of partnership between the plaintiff and defendant as publishers, the defendant covenanted not to carry on the business of a publisher in the canvassing trade, which consisted in sending with specimens of the works on sale, within 150

*miles of the General Post Office, London, 50 miles of Dublin or Edinburgh, or in any place in Great Britain and Ireland where the plaintiff carried on business: Held, not void as in restraint of trade, and that the plaintiff was entitled to recover for a breach of the contract.*

THIS action was brought for the breach of a covenant, entered into by the defendant upon dissolving partnership as publishers with the plaintiff, not to carry on the business of a publisher in the canvassing trade, which consisted of sending with specimens of the works for sale, within 150 miles of the General Post Office, London, 50 miles of Dublin or Edinburgh, or in any place of Great Britain and Ireland, where the plaintiff carried on business. The question was raised on demurrer to the defendant's plea whether the covenant was void as in restraint of trade.

*Dowdeswell* for the plaintiff, in support of the demurrer; *Cole* for the defendant, *contra*.

*Cur. ad. vult.*

The Court said, the defendant was a retiring partner, and had received a large price for his retiring, and he was not now entitled to retain the price without giving the return he had promised, not to interfere with the plaintiff in his business. And as the covenant was a reasonable one, and the plaintiff was therefore entitled to judgment.

#### Court of Common Pleas.

*Mitchell and wife v. Crassweller.* Jan. 27, 1853.

MASTER AND SERVANT.—LIABILITY FOR INJURY WHILE IN SERVICE AND PERFORMING DUTY.—DEVIATION.

*A carman in the employ of the defendants had run over the plaintiff's wife, while returning from l. with their cart, but it appeared that it was his duty to have put up the horse on his return from delivering parcels for them, but that he had conveyed their foreman, who was ill, part of the way to his house at l., but without the defendant's permission: Held, that the plaintiff was not entitled to recover against the defendants for such injury.*

A RULE nisi had been obtained on January 11 last, to enter the verdict for the plaintiffs in this action, which was brought to recover damages for injuries sustained by the plaintiff's wife, in consequence of having been run

over by the defendants' carman. The defendants pleaded not guilty. It appeared on the trial before *Jervis*, L. C. J., at the Guildhall Sittings, that the carman had been delivering parcels for the defendants during the day on which the accident in question took place, and that it was his duty upon his return home to put up the horse in the stables, but that upon being requested by the defendants' foreman, who was ill, he had taken him, without having first obtained the defendants' permission, part of the way to his house at Islington. The accident happened on his return therefrom. The learned Judge having directed a verdict for the defendants, on the ground the carman was not acting at the time of the accident as their servant, this rule had been obtained.

*Byles*, S. L., and *Petersdorff*, showed cause. *Shee*, S. L., and *Garth*, in support, cited *Joel v. Morison*, 6 Car. & P. 501; *Sleath v. Wilson*, 9 C. & P. 607.

The Court said, that as the journey in question was not a mere deviation in the course of his masters' service, but a new one on his own account, they were not liable for the accident, and the rule must be discharged.

#### Western Circuit.

(*Coram* Mr. Justice Erie.)

*Regina v. Curtis.* March 5, 1853.

INDICTMENT.—CONFESSION UNDER INDUCEMENT.—EVIDENCE.

*A defendant had confessed to her master upon being accused of having set fire to a straw rick upon his telling her in answer to her saying: "Master, will you forgive me if I tell?"—"Did you ever know me do you any harm?" Held, that such confession could not be received in evidence, on the ground it was given under an inducement.*

THIS was an indictment of the defendant for setting fire to a straw rick, the property of her master. It appeared that she had stated her wish to speak to him by herself, upon being charged therewith, and that she said, "Master, will you forgive me if I tell?" to which he replied, "Did you ever know me do you any harm?"

*Arney* for the prosecutor.

The Court said, that evidence of the conversation could not be adduced as it was given under an inducement, and the prisoner was accordingly acquitted.

### ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

#### RAILWAY CASES.

[*Concluded from p. 368.*]

##### COMMITTEE.

*Liability as creditor.—Admission.*—In an action against a member of the committee of a

projected railway company for work and labour, goods supplied, and money paid, the jury are to consider whether the defendant, by taking upon him the character of a committee-man, and afterwards acting in the affairs of the company, has authorised the company's solicitor or secretary, or any member of the com-

mittee, to hold him out to the world as personally responsible for the reasonable and necessary expenses incurred in forming such a company, and on its behalf; and, then, whether the credit was given on the faith of his being so personally responsible.

A committee-man, by merely allowing his name to appear in that character in the ordinary form of prospectus issued by railway companies, incurs no liability to a tradesman who supplies goods to the company; but the consent of a person to his name so appearing may be a fact of importance on a question of such liability as showing that he took an interest in the proposed concern, whether merely as a patron and well-wisher, or as co-operating in the measures preparatory to its formation. It becomes, therefore, material to know what the committee was doing when he joined it, and whether he knew what it was doing, and concurred therein. If advertising, printing, and stationery are necessary to the working of the committee, and no fund has been raised to pay for such necessities, the tradesman may justly suppose that all who act on the committee have authorised him to supply them on their credit, although the individual committee-man has not specifically given such authority, and though the tradesman may know nothing more of the committee-men than that they are probably men of character and substance. The absence of the committee-man's intention to pledge his credit is immaterial, if he have given the authority beforehand.

If, however, the tradesman looked solely to the deposits on shares as the funds from which payment was to be made to him, he has no cause of action against the committee-man.

As the liability of the committee-man arises, not from his filling that character, but from his authorising the orders for goods or services, his admission of general liability may be evidence of his having authorised such orders before his name appeared on the committee.

The jury are to consider whether such an admission was made because the actual liability in law was questionable, and for the purpose of preventing litigation, or whether the admission is referable to his conscientious conviction that his acts have made him personally liable. In the latter case they may infer his general liability.

Where a party has incurred and paid costs in bringing actions against committee-men to recover the amount of his claim, at the request of another committee-man, he may recover such costs from the committee-man at whose instance he sued, under the common count for money paid.

Where it appeared that, on the trial of an action against a committee-man of a projected railway company, one of the jury was also a member of the committee, and had been sued in respect of the claim then in question, the Court granted a new trial, on payment of costs.

*Bailey v. Macaulay*, 13 Q. B. 815; *Same v. Pearson*, ib.; *Same v. Haines*, ib.; *Same v.*

*Bracebridge*, ib.; *Dawson v. Hay*, ib.; *Wilson v. Holden*, ib.

#### COMPENSATION.

*For injury to land.*—*Ferry.*—*Inquisition, where to be taken.*—A compensation jury, of the city of L., awarded compensation to a landowner, under Stat. 8 & 9 Vict. c. 20, s. 6, in respect of the works of a railway company, by which he alleged that his land was injuriously affected.

The land was divided from the railway works by a river. The land was in the city; the works were not. The mode in which the works injuriously affected the land was, that they obstructed the access to a ferry over the river and appurtenant to the land in question: *Held*,

'That, as the land lay in the city, the inquisition was rightly take there.

'That the ferry might pass with the land, under a conveyance of the land with "all profits and commodities belonging to the same;" and that, where, as far as living memory went, the land and ferry had always been enjoyed by the same person, and there was no evidence to show that they ever had been the subjects of separate conveyances, a compensation jury were justified in concluding that the ferry did pass with the land under the above words. At all events, that there was no such want of jurisdiction as to call for a certiorari or prohibition. *Regina v. Great Northern Railway Company*, 14 Q. B. 25.

Cases cited in the judgment: *Sutton v. Clarke*, 6 Taunt. 29; *Peter v. Kendal*, 6 B. & C. 703.

#### COMPANIES' CLAUSES CONSOLIDATION.

1. *Mandamus to take off company's seal from register of shareholders.*—The Court will not grant a mandamus commanding a railway company to take the seal off the register of shareholders, on a suggestion that it was affixed without authority, and contrary to the provisions of Stat. 8 & 9 Vict. c. 16 (the Companies Clauses Consolidation Act, 1845), ss. 9, 66, 75, 90. *Ex parte Nash*, 15 Q. B. 92.

2. *Action for calls.*—*Executor.*—The form of declaration given by the 26th section of the 8 & 9 Vict. c. 16, is not applicable in an action for calls against an executor, where the calls were made in the lifetime of the testator. *Birkenhead, Lancashire, and Cheshire Junction Railway Company v. Cotesworth*, 5 Exch. R. 226.

3. *Transferee of bond.*—The transferee of a bond, transferred to him under the provisions of the Companies Clauses Consolidation Act (8 & 9 Vict. c. 16), is the party in whose name an action upon the bond must be brought. *Vertue v. East Anglian Railways Company*, 5 Exch. R. 280.

4. *Line part in England and part in Scotland.*—*Service of writ of summons on secretary.*—By the Act incorporating the Caledonian Railway Company, six miles of which are in England, and the rest in Scotland, the English Companies Clauses Consolidation Act (8 & 9 Vict. c. 16), is incorporated, so far as is neces-

sary for carrying into effect the English portion of the line. The company's principal office was in Edinburgh, and their only office in England was at Carlisle, which was used only for receiving passengers and goods.

*Held*, that service of a writ of summons in an action of debt, on the secretary of the company while attending a meeting in London, was good. *Wilson v. Caledonian Railway Company*, 1 L. M. & P. 731.

#### CONSOLIDATION OF CLAUSES.

*Exhibition of plans and sections, how far obligatory.*—A railway company, before applying for a Deviation Act, deposited with the clerk of the peace for the county, plans and sections of the proposed line, and cross sections showing the manner in which roads were to be carried over the line. On one of those cross sections (No. 3), were delineated the manner in which it was proposed to carry a road at J. over the line by a bridge, and the proposed inclination of the altered line of road.

The Deviation Act, when obtained, incorporated the Railway Clauses Consolidation Act, 1845, and enacted (sect. 9), that it should be lawful to the company to construct the bridges for carrying the railway thereby authorised over any roads, or for carrying any roads over the said railway, of the heights and spans and in the manner shown on the sections deposited.

The company made the line, and at J. deviated two feet vertically from the level marked on the plans. They carried the road over the line on a bridge of the proposed height and span, but with a different inclination of the altered road. A mandamus having issued, commanding the company to make the bridge and carry the road over it in conformity with cross section, No 3, and at the rates of inclination delineated thereon as the rates of inclination of the road when altered: *Held*, on demurrer to a plea to the return,

1. That the exhibition of the plans and sections imposed no obligation on the company, except in so far as the plans, &c., were incorporated in the Act. 2. That nothing in the Railway Clauses Consolidation Act, 1845, rendered the cross sections obligatory on the company. 3. That, if sect. 9 in the special act was obligatory (which, *semble*, it was so far as regarded the height and spans of the bridges), the obligation did not extend to the rates of inclination of the altered road, and that the mandatory part of the writ going in this respect beyond the obligation imposed by law, the writ was bad altogether. *Regina v. Caledonian Railway Company*, 16 Q. B. 19.

#### CORPORATION.

*Contract not under seal.*—*Work done in pursuance of objects of company.*—A railway company, duly incorporated by Act of Parliament (6 & 7 Wm. 4, c. cxliii.), entered into an agreement, *not under their seal*, with a contractor that he should execute certain works upon their railway, for the purpose of changing the system of locomotion which they then employed, the rope and stationary engine sys-

tem, to the ordinary locomotive principle. The contractor, in pursuance of the agreement, entered upon the works, and performed a portion of them, but before they were completed he was dismissed by the company: *Held*, that he could not recover the value of this work. *Diggle v. London and Blackwall Railway Company*, 5 Exch. R. 442.

#### DEED.

*Construction.*—*Act of Parliament.*—A declaration in case charged the defendants, in the first count, with digging trenches across a lane over which the plaintiff had a right of way; in the second, with severing pipes which conveyed water to the plaintiff's messuage; and in the third, with stopping a drain for carrying away the foul water from the premises.

Plea, that, by a certain Act of Parliament, the defendants were authorised to construct a certain railway; that they had agreed with the plaintiff for the purchase of a portion of the land of the plaintiff near to the messuage; that the making of the railway, and carrying the same *near to* the plaintiff's messuage, being likely to occasion injury and inconvenience to the plaintiff, it was agreed that the defendants should pay to the plaintiff, for and in respect of the purchase of the said land, such a sum as should be sufficient to compensate her, not only for the value of such land, but also for all such injury and inconvenience as should necessarily arise from, or be incidental to, the making of the railway, and carrying the same *near to* the said messuage of the plaintiff; that, in pursuance of such agreement, and before the committing of the alleged grievances, by a deed between the plaintiff and certain other persons having an interest in the said land, the plaintiff and those other persons, in consideration of 575*l.*, &c., conveyed the land to the defendants for the purpose of making the railway; that it was declared by the deed, that the 575*l.* so paid should be, and then was, accepted and taken by the plaintiff and other persons, for the purchase of the land, and by way of full compensation for all damage, loss, or inconvenience which could or might be sustained by them, or any of them, by severance, or otherwise by reason of the exercise of any the powers of the Act,—the said 575*l.* being the sum so theretofore agreed to be paid as aforesaid to compensate the plaintiff, not only for the price and value of the land, but also for all such injury and inconvenience as should necessarily arise from, or be incidental to, the making of the railway, and carrying the same *near to* the plaintiff's messuage. The plea then went on to aver, that the grievances complained of were part of the injury and inconvenience necessarily arising from and incidental to the making of the railway, and carrying the same *near to* the plaintiff's messuage, and were part of the damage, loss, and inconvenience sustained by the plaintiff by reason of the exercise of the powers of the Act, and intended to be compensated by and included in the said compensation money so paid as aforesaid.

The plaintiff, in her replication, craved oyer of the deed, and demurred generally.

The deed, as set out on oyer, recited that the plaintiff and others had agreed to sell the land in question, and the defendants to purchase the same for the purposes of their railway, for the residue of a certain term therein; and that the plaintiff and the others had agreed to accept and take, and the defendants had agreed to pay 575*l.* for the said land, &c., "by way of full compensation for all damages, loss, or inconvenience whatsoever which could or might be sustained by any person or persons (except the reversioners), by severance, or otherwise by reason of the exercise of any of the powers of the said Act upon the said lands, &c., so agreed to be purchased as aforesaid." It then proceeded to state that the plaintiff and others, in consideration of 575*l.*, conveyed all their interest in the said portion of the said land to the defendants:

*Held*, that the plea, as a plea of compensation, was bad in substance, inasmuch as the deed did not show that the 575*l.* was paid and received as compensation for the grievances complained of in the declaration:

*Held*, also, that the plea was not so framed as to show that the acts complained of were done under the authority of the Act of Parliament. *Pilgrim v. Southampton and Dorchester Railway Company*, 7 C. B. 205.

#### EXECUTION.

*On judgment recovered.—Sci. fa.—Due diligence.*—Whether execution upon a judgment recovered against a railway company governed by the provisions of the Companies Clauses Consolidation Act, should issue against a shareholder, depends, not only upon the plaintiff's failure to find sufficient property and effects of the company to satisfy his judgment, but also upon his having used due diligence to find such property and effects.

Whether he has used due diligence, is a preliminary matter, to be decided by the Court upon motion for leave to issue such execution.

Where, however, a *sci. fa.* issues against a shareholder upon a judgment recovered against the company, such due diligence should be stated on the writ, and may be traversed and tried by the jury. *Devereux v. Kilkenny and Great Southern and Western Railway Company*, 1 L. M. & P. 788.

Case cited in the judgment: *Bank of England v. Johnson*, 3 Exch. R. 598; 6 D. & L. 458.

#### HORSES AND LIVE STOCK.

*Special contract for the conveyance.*—Horses were delivered to a railway company, to be carried by them from A. to B., for hire, subject to a note or ticket containing the following notice:—"This ticket is issued subject to the owner's undertaking to bear all the risk of injury by conveyance and other contingencies; and the owner is required to see to the efficiency of the carriage before he allows his horses or live stock to be placed therein; the

charge being for the use of the railway, carriages, and locomotive power only, the company will not be responsible for any alleged defects in their carriages or trucks, unless complaint be made at the time of booking, or before the same leave the station; nor for any damages, however caused, to horses, cattle, or live stock of any description, travelling upon their railway, or in their vehicles."

*Held*, that, giving to the words of the contract their most limited meaning, they must apply to all risks, of whatever kind, and however arising, to be encountered in the course of the journey; and, therefore, that the company were not responsible for injury done to a horse from the firing of a wheel, in consequence of the neglect of the servants of the company to grease it. *Austin v. Manchester, Sheffield, and Lincolnshire Railway Company*, 10 C. B. 454.

Cases cited in the judgment: *Southcote's case*, 4 Co. Rep., 84, n.; *Morse v. Slue*, 1 Vent. 238; *Hinton v. Dibber*, 2 Q. B. 646; 2 Gale & D. 56; *Owen v. Burnett*, 2 C. & M. 353.

#### INFANCY.

*Of registered shareholder.—Effect of.*—Where nothing but the simple fact of infancy is pleaded to an action for railway calls against a purchaser who has been registered and thereby become a shareholder in a permanent character, the interest continuing to be vested in the infant, and the subsequent obligation to pay, such plea is insufficient.

Therefore, where, to a declaration for railway calls, the defendant pleaded, that, at the time when he first became the holder of the shares, and at the time of his making the contracts by force of which the debts, causes of action, and liabilities in the declaration mentioned, accrued to the plaintiffs and were incurred by the defendant, and at the time of his making and entering into the contracts by force of which the plaintiffs' claim to be entitled by law to make the call upon the defendant, as in the declaration alleged, the defendant was an infant within the age of 21 years; to which the plaintiffs replied, that the defendant, at the time when he first became the holder of the shares, and at the time of his making the contracts in the plea mentioned, was of the full age of 21 years; upon which issue was joined, and a verdict entered for the defendant: *Held*, that the plaintiffs were entitled to judgment *non obstante veredicto*. *Birkenhead, Lancashire, and Cheshire Junction Railway Company v. Pilcher*, 5 Exch. R. 121. And see *Calls*, 4.

#### LANDS' CLAUSES' CONSOLIDATION.

1. *Compulsory sale.—Refusal of owner to sell less than the whole land.*—Under the Lands' Clauses' Consolidation Act, 8 & 9 Vict. c. 18, if the promoters of an undertaking demand a compulsory sale of premises by authority of the Statute, the owner, by sect. 92, may refuse to sell less than the whole; but, if they have given notice of requiring a part, the owner cannot, by reason of such notice, require that



the whole be taken; and the promoters, on his refusal to sell part, may abandon the purchase. *Regina v. London and South Western Railway Company*, 12 Q. B. 775.

2. *Assessment of compensation.*—*Warrant to summon a jury, issued without notice to landowner.*—In debt, under "The Lands' Clauses' Consolidation Act, 1845" (8 & 9 Vict. c. 18), for the amount of compensation claimed by the plaintiff according to s. 68, for his lands actually taken by defendant, a railway company, the declaration alleged that plaintiff gave defendants notice in writing, of his claim, which exceeded 50*l.*, and of his desire to have compensation assessed by a jury; that 21 days elapsed, and that defendants did not give plaintiff notice of their intention to issue a warrant, nor did they issue a warrant, to summon a jury to assess compensation. Plea, that they did issue a warrant within 21 days. On demurrer, stating as ground that the plea, though pleaded to the whole count, left part of the breach unanswered.

*Held*, by Lord Campbell, C.J., Patteson and Erie, JJ., that no notice was required by the statute, and that the plea was good. *Coleridge, J., dissentiente. Railstone v. York, Newcastle, and Berwick Railway Company*, 15 Q.B. 404.

3. *Award to be taken up by promoters.*—*Umpire's lien for fees.*—*Mandamus.*—Under the Lands' Clauses' Consolidation Act, 8 & 9 Vict. c. 18, if a difference between a landowner and promoters of an undertaking has been referred to arbitration, and an award made, the Court will, under sect. 35, compel the promoters by mandamus, at the landowner's instance, to take up the award.

And the promoters must, for that purpose, pay the fees due on the award; the arbitrators or umpire having a lien on the award for such fees, which the promoters are bound to satisfy, except so far as the obligation may be limited by sect. 34. *Regina v. South Devon Railway Company*, 15 Q.B. 1043.

4. *Costs of inquiry before a jury.*—A party, whose land has been "damaged or injuriously affected" by the execution of the works of a railway company, and who, in a proceeding initiated by himself under the 68th section of the Lands' Clauses' Consolidation Act, 8 & 9 Vict. c. 18, recovers by the verdict of a jury a larger sum than that tendered by the company, is entitled to the costs of the inquiry before the sheriff,—the earlier provisions of the Statute as to the manner of assessing compensation, being virtually incorporated in that section.—*Richardson v. South-Eastern Railway Company*, 11 C.B. 154.

5. *Construction.*—"Lands which have been taken."—The words, "lands which shall have been taken for or injuriously affected by the execution of the works," in the 68th section of the Lands' Clauses' Consolidation Act, 8 Vict. c. 18, include such lands only as are actually taken or actually affected by the works. *Burkinshaw v. Birmingham and Oxford Junction Railway Company*, 5 Exch. R. 475.

And see *Mandamus*, 2.

# MANDAMUS.

1. *To complete new lines of road.*—*Excuse by want of funds and expiration of compulsory powers.*—*Laches in prosecutor.*—An Act (6 & 7 Wm. 4, c. viii.), for repairing and amending a turnpike road, recited that, the trustees under former Acts had amended, &c., and had expended and borrowed money for the purpose, but that the road could not be sufficiently amended and repaired, nor the debt paid, unless further powers were granted; it recited also that the public would be benefited if powers were given to make certain new diversions from the former road; it then (after repealing the prior Act) enacted that this statute should, for an enlarged term, be put in execution for repairing and amending the said road, and for making and maintaining the new lines; authorised the trustees to continue the existing toll-gates, and to take certain increased tolls, and required them to apply the tolls, and the money already in their hands in amending the said roads, paying off debt, and otherwise putting this Act in execution as to them should seem expedient. It then authorised, empowered, and required them to form the new lines, and for that purpose to enter upon and take lands and buildings, making compensation, &c.; but the compulsory power in this respect was to cease in five years from the passing of the Act. The trustees entered into receipt of the increased tolls, but did not make the new lines. Seven years after the compulsory powers had expired, a person moved for a mandamus to the trustees to make the new lines, stating on affidavit that he was an inhabitant of the neighbourhood, and that the making of them would be an advantage to him and other neighbours, and to the public; but he did not explain his delay in making the application. Affidavits in answer stated that, soon after the statute now in question, another Act passed for making a railway, which had accordingly been formed, running parallel to the turnpike-road, greatly injuring the receipt by tolls, occupying part of the space intended for the new lines, making it impracticable to complete them except at a very great expense, and rendering the construction of them unimportant. They also ascribed to the prosecutor a merely personal motive for making his application.

*Held*, that laying out of consideration the affidavits in answer (which might have been controverted on a return), the Court, in its discretion, ought to refuse a mandamus. *Regina v. Halifax Road Trustees*, 12 Q.B. 448.

2. *To assess compensation after expiration of compulsory powers.*—*Lands' Clauses' Consolidation Act.*—Stat. 8 & 9 Vict. 18, s. 123 (Lands' Clauses' Consolidation Act, 1845) provides that the powers of promoters of an undertaking, within that Act, and any special Act there referred to, "for the compulsory purchase or taking of lands for the purposes of the special Act," shall not be exercised after the expiration of three years from the passing of the special Act.

*Held*, by the Court of Queen's Bench, that this clause does not prevent such promoters from summoning a jury to assess compensation for land at the instance of the landowner, when the promoters have, within the three years (by virtue of their special Act), given notice to the landowner of their requiring such land, but have neglected to summon a jury till the three years had expired. And that the promoters may, at the landowner's instance, be compelled by mandamus to summon such jury.

Judgment affirmed by the Exchequer Chamber. *Regina v. Birmingham and Oxford Junction Railway Company*, 15 Q. B. 634.

#### MANAGING COMMITTEE.

*Fraudulent misrepresentation by agent.*—Assumpsit against C., H., and Y., for money had and received. The plaintiff's case was that the three defendants were members of the committee of management of a registered railway company, to which company he had paid the money in question as a deposit on shares; and that, before he so paid, and while defendants were committee-men, a false representation as to the state of the company had been publicly advertised in the name of the committee. The only evidence of the receipt of the money was the payment to bankers, appointed by the committee, who gave a receipt on behalf of five trustees, of whom H. was one, but not either C. or Y.

*Held*, that the action did not lie.

*Semble*, that the defendants might have been liable for the fraud in another form of action, if it had appeared that the false representation had been wilfully made by a party authorised to act generally in the transaction for the defendants, and the jury had found the fraud in fact; although there was no direct evidence that the fraud had induced the plaintiff to pay the money. *Watson v. Earl Charlemont*, 12 Q. B. 856.

Cases cited in the judgment: *Walstab v. Spottiswoode*, 15 M. and W. 501; *Wontner v. Shairp*, 4 C. B. 404, 420.

See *Committee*.

#### NOTICE TO OWNER.

*To take land.*—*Right of owner to recover value where lands not taken.*—A., the proprietor of certain houses, which were liable to be taken for making a railway, under the provisions of the local act of the promoters of the undertaking, received a notice under the 18th sect. of the 8 Vict. c.18, from the promoters, that the property would be required by them for the railway, and the notice demanded the particulars of A.'s interest therein, and stated their willingness to purchase it. A. duly furnished these particulars, and a sum of 4,500*l.* was set upon the property by him, which amount he claimed from the promoters as a compensation for taking the property, and he required payment thereof, or that a warrant should be issued by the company to summon

a jury to assess the proper amount, under the provisions of the Act. The company took no further step in the matter: *Held*, that, under these circumstances, A. could not maintain an action to recover from them the 4,500*l.* *Burkinshaw v. Birmingham and Oxford Junction Railway Company*, 5 Exch. R. 475.

#### PROVISIONAL COMMITTEE-MAN.

1. *Individual liability.*—*Admission made under mistake.*—A member of a provisional committee, who first takes part in the affairs of a company, so as to make himself individually liable on a given day, does not thereby make himself liable for services performed for the company after that day, where the order was given before it.

An admission by him of his liability is not conclusive against him; but the jury, in estimating its weight, are to take into consideration the circumstances under which it was made.

As, that, when it was made, unfounded opinions prevailed respecting the extent of a provisional committee-man's liability. *Newton v. Belcher*, 12 Q. B. 921.

2. *Resolution.*—*Evidence.*—In an action by the plaintiffs for work done as engineers for a railway company, of which the defendant was a member of the provisional committee, the plaintiffs gave in evidence certain resolutions of the committee, made at meetings at which the defendant was present. The defendant offered in evidence a resolution to the effect that engineers should be employed, but that the members of the provisional committee were not to incur any personal responsibility; but at the meeting the plaintiffs were not present: *Held*, that the resolution was receivable in evidence. *Rennie v. Clarke*, 5 Exch. R. 292.

#### PURCHASE.

*Allegation of breach.*—*Construction of Act.*—By an Act for making a railway, the company were authorised to purchase the church of St. M., in Liverpool, and certain grounds and buildings attached thereto, not forming part of the site of the church, but that nothing in the Act contained should enable the company to take down or interfere with the said church or ground, without the consent in writing of the diocesan first obtained, upon the previous payment by the company to him and the Archbishop of York, for the time being, of such sum as should be agreed upon between the said archbishop and bishop and the company,—in ascertaining which sum, regard was to be had to the cost of a site for a new church, and of erecting and completing the same, and also to the value of such part of the premises as did not form the site of the church; and that, upon payment of the sum so to be agreed upon, the then present church, and the ground attached thereto, not forming the site of the church, and the freehold and inheritance thereof, should vest in the company; and that the sum so paid to the archbishop and bishop should be employed by them, among other

purposes, in making payment to the person entitled thereto of the value of the said ground and buildings, not forming part of the site of the church.

The archbishop and bishop, having agreed with the company, offered the plaintiff, the incumbent of the church of St. M., and the person entitled to the ground and buildings not forming part of the site of the church, 300*l.* as the value of his interest therein, upon the assumption, that, being consecrated ground, it was in his hands inapplicable to any secular purpose, and was therefore only worth that sum. The plaintiff thereupon brought an action upon the case against them.

The declaration, after setting forth the provision of the Act above referred to, stated, that the plaintiff was entitled to the value of the land and premises not forming the site of the church; that it was afterwards agreed between the company and the defendants, that the sum of 7,732*l.* 17*s.* should be paid by the company to the defendants, as the sum upon the payment whereof the company were to be authorised to take possession of the said church and premises, and take down the church, with the consent of the diocesan; that the said sum was paid to the defendants, and thereupon the premises became and were invested in the company, and the bishop gave his consent accordingly; that the said sum was sufficient to purchase a site, and complete the new intended church, and also to pay the value of so much of the said ground and buildings as did not form the site of the church; and that the value of the said ground and buildings was 2,000*l.*, which sum the defendants were requested to pay the plaintiff, but which they refused to pay, and had not paid, although a reasonable time for so doing had elapsed.

At the trial, the Judge told the jury that the plaintiff was not concluded as to the value of the ground and buildings so vested in him, and not forming part of the site of the church, by the determination of the archbishop and bishop under the Act; and he left the question of value to them, telling them that they were not bound to estimate the value as of land irrevocably appropriated to spiritual uses:

*Held*, that the jury were properly directed;

*Held*, also, that the declaration sufficiently disclosed the duty of the defendants under the statute, and that the breach was well alleged. *Hilcoat v. Archbishop of Canterbury*, 10 C. B. 327.

#### SCI. FA.

*Issuing execution against shareholder.*—*Semble*, that the proper form of issuing execution under the 8 and 9 Vict. c. 16, s. 36, against the shareholder of a railway company, is by *sci. fa.* *Devereux v. Kilkenny and Great Southern and Western Railway Company*, 1 L. M. & P. 788.

#### SHAREHOLDER.

*Execution against.*—The proper course to obtain execution against a shareholder of a

public company, under the 8 & 9 Vict. c. 16, s. 36, is by motion for a *scire facias*, and not by a motion for a rule to show cause why execution should not issue against such shareholder. *Hitchins v. Kilkenny and Great Southern and Western Railway Company, In re Emery*, 10 C. B. 160.

#### SHARES, SPURIOUS.

*Money paid in respect of failure of consideration.*—*Broker and principal.*—*Sale of spurious shares.*—*Stock Exchange rules.*—On the 10th March, 1847, A. employed B., a share-broker and member of the London Stock Exchange, to sell for him certain documents which purported to be scrip or certificates, each for 50 shares, in a projected railway company. On the 27th B. sold these certificates to C., and handed over the proceeds to A. The certificates being subsequently found to be forged, B. was, on the 11th of May, called upon and obliged to pay (pursuant to a resolution of a committee of the Stock Exchange) to C. a certain agreed value as for genuine certificates of that company, which considerably exceeded the price for which he had sold the spurious certificates.

In an action by B. against A. to recover the sum paid by him to C., the declaration contained a special count averring a promise by A. that the certificates were genuine, and a count for money paid. Upon the latter count, A. paid into Court the sum he had received on the original sale, with interest.

*Held*, that B. was not entitled to recover upon the special count, there being no promise, express, or implied, that the certificates were genuine; and that, under the count for money paid B. was only entitled to recover the amount actually paid by him to A.

*Held*, also, that the resolution of the committee of the Stock Exchange, made after the transaction was completed, however it might bind the members of that body, could not affect A. *Westropp v. Solomon*, 8 C. B. 345.

#### WINDING-UP ACT.

1. *Construction.*—*Quære*, whether the Joint-Stock Companies Winding-up Act, 1846 (11 & 12 Vict. c. 45), applies to railway companies; and whether the Joint-Stock Companies Winding-up Act, 1849 (12 & 13 Vict. c. 108), is retrospective? *Mackenzie v. Shigo and Shannon Railway Company*, 9 C. B. 250.

2. *Contributory.*—An action having been brought against the defendant, a provisional committee-man of a certain railway company provisionally registered, for work done for and on behalf of the company, and judgment having been recovered against him, and a writ of *ca. sa.* issued thereon, an order absolute was made for winding up the affairs of the company under the Winding-up Act, 11 & 12 Vict. c. 45, and an official manager was appointed. The Court stayed the proceedings until after proof by the plaintiff of his debt before the Master appointed by the said Act. *Macgregor v. Kelly*, 4 Exch. R. 801.

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## ATTORNEYS' CERTIFICATE DUTY.

### FALLACIES OF THE "TIMES."

WE were enabled in our last Number briefly to advert to the gratifying fact, that the House of Commons, *for the sixth time*, in the fullest House which ever divided upon the question, and by an increased majority, had decided in favour of the claim of the Attorneys and Solicitors of Great Britain and Ireland, to the remission of the Annual Certificate Duty. It was also intimated, that the motion for the second reading of Lord Robert Grosvenor's Bill would be postponed until after the Chancellor of the Exchequer made his financial statement, when, it may be hoped, the Right Hon. Gentleman will consider it consistent with his sense of duty to defer to the clearly expressed sentiments of a majority of the people's representatives, in reference to a tax involving a comparatively inconsiderable portion of the public revenue, but pressing with great severity and injustice upon that branch of the Legal Profession which is exclusively subjected to its operation. The repeal of the Certificate Duty has hitherto, fortunately and judiciously, as we conceive, been dissociated from all party considerations—the parliamentary majority advocating it embraces men of every political creed—still, it is due to those who, like Lord Robert Grosvenor, give their general support to the Government, not to precipitate a Ministerial defeat when the object in view may be attained without offending the *amour propre* of any member of the administration. Even if the forms of Parliament and the state of public business allowed—as they did not—of an earlier day being fixed for the second reading, we are satisfied the noble lord, the member for Middlesex, exercised a sound

discretion in deferring this stage, so as to afford the Cabinet an opportunity of considering how the *significant hint* afforded by a majority of 52, in a House consisting of nearly 400 members, can be taken advantage of with the best grace and the least public inconvenience.

Without relying too much on the success already achieved, it may safely be asserted, that the Bill has now been introduced under circumstances more promising and encouraging than existed on any previous occasion, since the Legislature has been appealed to for relief. Nevertheless, we should mislead our readers by suggesting, that the only difficulty remaining is, to persuade the Chancellor of the Exchequer to relinquish 120,000*l.* of annual revenue. The opposition to the repeal of the Attorneys' Certificate Duty lies deeper. There are persons—not without authority in certain quarters—who conceive that every attempt to exercise influence, and any—the slightest—manifestation of independence by an attorney, ought to be resented as an impertinence, if not indeed punished as a crime. This *liberal* class has found a congenial exponent of its prejudices amongst the leading writers for the *Times* newspaper, which, on the morning after the recent division upon the introduction of the Bill, contained an article in which ill-concealed mortification and disappointment were combined with a greater number of fallacies, and a bolder disregard of facts, than are often discovered in the columns of that journal. The writer's moral perception is so overclouded on this occasion, that he seems to find it impossible to conceive a high-minded member of the British Legislature heading a movement of this nature from no other impulsion than a sense of its justice. "Lord Robert Grosvenor, we know not why," (says the *Times*), "except that every

man has his vocation, is the patron saint of attorneys; so once a year he returns to the House at the head of rather more than two hundred attorneys' clients—of the *rich, landed, and encumbered class*—and fairly carries the House by assault."

The supposed difficulty the writer professes to feel in understanding why a nobleman wholly unconnected with the Legal Profession, and distinguished, even in his own elevated sphere, for uncompromising independence of character and sterling worth, should desire to identify his name with the repeal of the Attorneys' Tax, it will be perceived is at once overcome when the noble lord's supporters are referred to. The 219 gentlemen who went out with Lord Robert Grosvenor, are not individualised, and may, therefore, with more safety, be aspersed. They are disposed of in mass by our candid contemporary, as members belonging to "the rich, landed, and encumbered class." A glance at the Division List will show the general inaccuracy of this description. The majority contains the names of many members wholly unconnected with the landed aristocracy, and of some who, though rich, are notoriously and happily *not* encumbered.

The *Times* complains, that whilst other trades and professions, suffering "an equal amount of injustice," are content either to bear what is inevitable, or "now and then to memorialise the Chancellor of the Exchequer, in a quiet, rational, argumentative, fashion," the attorneys "do not make it a case for memorials or arguments, or any reasonable representations, but *storm* the House of Commons once a year. Emphatically denying that any trade, or the members of any other profession, are suffering "equal injustice" from a tax upon articles of clerkship, a tax upon admission, and the annual tax from which attorneys are now seeking to be relieved, we cannot allow the flagrant misrepresentation conveyed in the statement above cited to pass wholly uncontradicted. What are the real facts? Is the *Times* ignorant, or does it desire to forget, that the grievance at length about, we trust, to be redressed, had been the subject of repeated petitions and memorials for several years before any Bill for its repeal was brought into Parliament? As stated in this publication some time since,<sup>1</sup> in the year 1835, Mr. Freshfield presented a petition to the House of Commons set-

ting forth the grounds of the claim to relief, and, in 1836, a deputation from the Incorporated Law Society waited upon the then Chancellor of the Exchequer upon the subject, when the minister stated his disposition to take off the tax, if the same amount could be raised by other and less objectionable means. Again, in 1848, a deputation consisting of delegates from the country law societies, united with the Incorporated Law Society, waited on the Chancellor of the Exchequer, and it was not until the Government of that day declined to hold out any promise of relief that a Bill was prepared, and not until the year 1850, when the national revenue, as at present, exhibited a surplus, that the sense of the House of Commons was for the first time taken upon the question.

In that Session, after successful divisions on bringing in the Bill, and on the second reading, the Bill was again discussed in Committee, amended, and reported as amended, but at the last stage, upon the motion for the third reading, at three o'clock in the morning, and in a House of only 200 members, the Bill, as amended, was rejected by a majority of 24. In the next Session, from causes not within the control of its promoters, the Bill was not introduced until the 8th of July, a period which rendered it impossible to do more than take the sense of the House upon the principle, and thus reverse the unfavourable effect of the division upon the third reading in the preceding Session; and in the last Session (1852) no Bill was introduced, but the promoters contented themselves with laying a statement of their grievances before the late Chancellor of the Exchequer, and relied upon his assurance to give the question an early consideration. The history of the movement, therefore, proves, that if "the immensely potential agency of attorneys in British society" exists, as suggested by the *Times*, in this instance, at all events, the power has been exercised with singular patience and moderation. Be the merits of the question, which the *Times* thinks fit to characterise as an "excessive absurdity," what they may, it cannot, with a semblance of veracity, be denied, that it has been modestly and temperately urged, and that personal canvass was not resorted to, as the means of obtaining relief from personal hardship, until every other means had been ineffectually resorted to. We pass over the statement—miscalled a *fact*—upon which some flimsy reasoning is attempted to be founded, that

<sup>1</sup> 43 Leg. Obs., p. 290, published 14th of February, 1852.

the movement "has never gone beyond one triumphant majority," by a reference to the Session of 1850, when the Bill reached the last stage, after *four* triumphant majorities, to examine the only shadow of argument the writer in the *Times* has ventured upon. He tells us, that the tax is not such a hardship as the attorneys would make believe, and the proposition is thus supported:—

"There are many costly legal institutions maintained in this country in the shape of Courts of Law, judicial functionaries, prisons, and other modes of punishment and repression. They must be paid for, and, though all derive benefit from them and all help to pay for them, yet it is evident some derive greater and more immediate benefit than others. The persons thus directly, and in the first instance benefited, are necessarily the clients of attorneys, and it is fit those clients should pay something more than others for the common benefit in which they have an extraordinary share. They can only be taxed through attorneys, stamps, and fees, and, as it would be impossible to tax every legal consultation or lawyer's letter, the best way to tax this part of the affair is by a poll-tax on the attorney himself."

Here is an argument, which certainly has the merit of novelty, however deficient in soundness, and it is the only argument yet put forth, in or out of Parliament, against the repeal of the certificate duty. Courts and prisons, says this profound economist, are maintained with some expense, they are useful to all, but peculiarly beneficial to the clients of attorneys, and as those clients can only be taxed through attorneys, stamps and fees, it is best to put a poll-tax on the attorney himself.

If the Finance Minister adopts this principle, he will be able indefinitely to extend the area of taxation. Let us see how it will apply to other classes as well as attorneys. Why not impose a poll-tax upon silversmiths? If the reasoning of the newspaper writer is good for anything, the silversmith escapes improperly. As thus:—the police force must be paid for, it is beneficial to all, but more immediately beneficial to those who possess large quantities of plate. The possessors of such plate can only be taxed through a police-rate and their silversmiths, and as it would be impossible to tax them on every occasion on which a policeman looks down towards the pantry, the best way to tax "this part of the affair" is by a poll-tax on the silversmith himself! So as to the Church, not to cite it irreverently:—the maintenance of a place

for public worship is attended with some expense. All derive good from it, but those who attend divine service are the persons directly and primarily benefited. They can only be taxed by church-rates, pew-rates, and parish clerks, but it would be inconvenient, if not impossible, to make them pay for every sermon they hear. The best way to tax "this part of the affair," therefore, is to put a poll-tax upon parish clerks, with a graduated scale for pew-openers. The miserable sophistry ventilated on this occasion, however, is totally unfounded. The client does not pay the attorneys' certificate duty any more than he pays the attorneys' income tax, or his house duty, or his butcher and baker's bills. The suitors of the Courts—the class we presume pointed at as "the clients of attorneys,"—are subject to no increased charge by reason of the certificate duty, but it has for some time been pretty generally considered, that they already pay more than enough for any individual benefits they receive, in the shape of stamps and fees, to say nothing of the necessary expense of procuring evidence and professional advice, often operating as a practical denial of justice. The certificate duty does not add to the amount of the attorney's bill, and it is not suggested that its repeal will diminish the amount. It is not proportioned to the extent of the attorney's business, the number of his clients, or the amount of his profits, and when the public interest rendered it expedient that the expenses of legal proceedings and the emoluments of attorneys should be materially diminished, the attorney's poll-tax was discarded from the consideration. The article referred to concludes with the suggestion, that the only alternative for the certificate duty is a percentage—"say one per cent. on every lawyer's bill." The writer has overlooked the fact, that any attorney whose income exceeds 150*l.* per annum, already pays, in common with other professional men, three per cent. on that portion of his bill which is remunerative. The certificate duty is over and above the income tax: a payment of 12*l.* for income tax, supposes an annual income of 400*l.*, and a return of the number of attorneys with incomes below 400*l.* per annum would afford some idea of the number of struggling professional men, upon whom the tax presses with undistinguishing severity, and whose pending appeal to the justice of the Legislature, has been thus met by the generous hostility of the writer in the *Times*.

We refer to another part of the present Number for the Opinions of the Editors of several other newspapers, who take a very different view of the subject from the *Times*.

The Bill is in the same form as on previous occasions,—repealing the Tax, not only on Attorneys and Solicitors, but on Proctors, Writers to the Signet, and Notaries. It also, as to the attorneys and solicitors of England and Wales, re-enacts the clauses in the 6 & 7 Vict. c. 73, relating to their annual registration. These clauses have been in all the prints of the Bill, and it was deemed proper to add to the former title the words "and to amend the Law relating to the Registration of Attorneys and Solicitors." This part of the title was not expressly included in the terms of Lord Robert Grosvenor's notice of motion; and therefore, according to the forms of the House, it became necessary to re-introduce the Bill, and this has accordingly been done.

#### DEBATE ON THE ATTORNEYS' CERTIFICATE TAX.

THE motion for leave to bring in the Bill to repeal the Attorneys' and Solicitors' Annual Certificate Duty came on in the House of Commons on Thursday, the 10th instant.

Lord R. Grosvenor said, before going into the merits of this case he wished to notice the position in which the question was placed. So much had the Profession felt this tax to be a grievance, that during the last 20 years they had never ceased to petition for its removal. He himself had given notice to move for its repeal in 1849, but was not able to bring forward the question till 1850. On that occasion, although opposed by the Government, he was successful. The bill went through several stages, until at last, towards the end of the Session, it was defeated through one of those difficulties which were incidental to the attempts of private members at legislation. In 1851, on account of the ministerial crisis and the debates on the Ecclesiastical Titles Bill, he was unable to bring forward his measure until late in the Session, and on that occasion, although again opposed by the Government, the bill was carried by a greater majority than before. He had some reason to believe that had his friends remained in office, they would have supported the principle, and, deferring to the opinion of the House, would have considered the claims of the solicitors unanswerable. Last year, in consequence of the political circumstances of the time, and the near termination of the Session, it was obvious that the House could not possibly pay sufficient attention to the subject. If this were the same Parliament, or the House was composed exclusively of the same members as in the last year, he should not feel justified,

seeing that he had so often called attention to the same subject, in doing more than reading the notice on the paper of the House, make the motion, and sit down; but as there were 200 gentlemen in the present who were not members of the last Parliament, he felt he should scarcely do justice to those whose interests had been committed to his charge if he did not again direct attention to the history of the tax, and the arguments on which the demand rested for its repeal. At the conclusion of the last century, Mr. Pitt being at the time in great distress for money, was compelled to raise it, not by any fiscal scheme, the principle of which he approved, but by any tax the House could be induced to vote. Mr. Pitt admitted that he could not justify this tax on attorneys and solicitors on any principle, and to make it tolerably fair in its application, he attached to it the duty on war-rants having reference to the amount of business done. But this fair and reasonable feature of the tax had long since been repealed; and now, without reference to the amount of business, the certificate duty was charged upon all the Profession alike, 12*l*. a year for Metropolitan solicitors, and 8*l*. in the country; and the consequence was, that while to the house of large practice it amounted to one-half, or one-fourth per cent., it was upon the young man just entering into business, or the man whose practice was small, 6 or in some cases 7 per cent. Though, however, this inequality was a great objection to the tax, he was aware that if the case of the attorneys and solicitors rested upon that ground alone, they would be met by the argument that the same ground might be urged for the repeal of the taxes or licence duties on all trades subject to them. Still he conceived it would hardly be contended that because for the purposes of revenue certain trades paid licence duties that therefore a Profession—or rather, a part of a learned Profession—should pay an annual certificate duty to entitle them to practice; for, it should be remembered, that to qualify for the one required a long, laborious, and expensive education, while the others might be followed with little if any education. And if it were the principle to lay a tax on the permission to follow professions, then the barrister, the physician, the artist, the sculptor, the architect, and all other professions, ought to pay as well as the attorneys. But even were those professions made to pay an annual certificate duty they would be dealt with more fairly than were the attorneys and solicitors. With regard to the attorney and solicitor, the tax-collector met him on the very threshold of his Profession, and called upon him to pay 120*l*. before his parent, if he had one in the Profession, could communicate to him the first rudiments of professional knowledge. When his articles were out he was again called upon to pay a tax of 25*l*. before he could be admitted to practise. Then, when he did practise, he had to pay 3 per cent. income tax on his earnings, and beyond all this he was charged a certificate duty,

which amounted to 3 per cent. on the aggregate returns of the Profession. He knew it had been the fashion to revile this branch of the Legal Profession, and to call the members of it extortioners, bloodsuckers, vampires, and he knew not what besides; and he had heard of one member of Parliament who, having been asked the difference between an attorney and a solicitor, replied that there was precisely the same difference between them as there was between an alligator and a crocodile. But as it appeared to him it was the Government who were the extortioners in maintaining a fiscal system, by which 120,000*l.* a year was extracted from the pockets of that Profession in the shape of certificate duty, 80,000*l.* in the stamp duty on articles of clerkship, and on the stamp duty on admissions—in all, 200,000*l.* a year on the industrial earnings of one portion only of a learned Profession. When this certificate duty was first proposed by Mr. Pitt, Sir E. Ashley, who was member for Wilts, expressed himself delighted at the notion of skinning the attorneys, and said that he looked upon law as a luxury, and that all who indulged in it ought to pay for it. He (Lord R. Grosvenor) did not think law was a luxury but a necessary evil. He thought law, which in other terms was “the administration of justice” should be made so cheap that it should be open to all. It was far better to simplify the law and make it cheap than to maintain a system apparently for the benefit of the practitioners, by which it was made complicated and dear to the public, compelling those practitioners on the other hand to bear an undue proportion of the public burdens. He was glad to find that after many long delays the Government and the Legislature had at length entered in earnest upon the career of legal reform; but, as by those reforms the profits of the Profession were necessarily largely reduced the claim for the abolition of the certificate tax was the greater. He had hoped that his right hon. friend the Chancellor of the Exchequer would have spared him the necessity of making a speech by at once acquiescing in the motion; and, though it appeared he was mistaken, he was altogether at a loss to conceive on what grounds the very ingenious mind of his right hon. friend would venture to resist it. If, as he hoped and believed, his right hon. friend entertained a strong objection to this tax he could understand that he might be desirous of having the opinion of the new Parliament expressed on the subject before dealing with it. If so, he felt sure that when that opinion was pronounced, as it had been in the last Parliament, it would be met with respect and deference by his right hon. friend. One word as to the amount of revenue involved in the proposition. The whole amount of this annual certificate duty was only 120,000*l.*, a sum so insignificant that if there were no surplus, injury to the revenue ought not to be urged against its repeal. As it was, however, there was no reason for supposing that the revenue was not in a position easily to bear this trifling abstraction.

And that being the case, he trusted there would be no objection to a motion, pledging the House to the repeal of a tax so objectionable in principle, and so unjust and unequal in its operation. He did not anticipate any objection from his right hon. friend, as to the period at which the motion was brought forward, for he imagined his right hon. friend would naturally desire to know the mind of the House in reference to the claims for the repeal of this or any similar tax before he brought forward his Budget, rather than that he should afterwards be compelled, by a subsequent vote of the House, to make reductions for which he might not have been provided. The old objection against motions for abolishing or reducing taxes—that if brought forward before the Budget, they were too soon, and if after the Budget, they were too late—he did not expect to be met with on this occasion; for that had been completely disposed of on a former evening by the right hon. the President of the Board of Trade on the motion of the hon. member for Montrose. After thanking the House for the attention with which they had listened to him, the noble lord concluded by moving for leave to introduce a Bill to repeal the Attorneys' and Solicitors' Annual Certificate Duty.

Mr. Cowan seconded the motion. After referring to the petition which he had presented that evening against the tax, signed by 111 members of the Legal Profession of Edinburgh, he said that the petitioners objected to the tax, and he agreed with them, on the ground that it was an additional charge imposed upon them beyond the ordinary taxes. With regard to the principle of taxing professions he knew of no fairer tax that could be imposed than an annual licence duty, provided that it extended to all professions alike. Two years ago he had given notice of a motion on this subject in Committee on the Income Tax Bill, but the success of his hon. friend's (Mr. Hume's) proposal to refer the bill to a Select Committee, prevented the opinion of the House being taken upon it. There were now 20 trades and professions paying licence duty under the excise and 12 or 13 paying licences under the stamp duties. The amount paid for excise licences in England, Ireland, and Scotland was 1,269,000*l.*, and for licences under the stamp duties 215,000*l.*, together, 1,484,000*l.* Looking to the small number of trades and professions which contributed to these taxes, he begged to suggest to the Chancellor of the Exchequer that schedule D in the Income Tax Act should be repealed, and that the Government should consider the propriety of substituting for it an annual licence or certificate duty extending to all trades and professions.

The Chancellor of the Exchequer observed, that whatever might be the intention of the hon. gentleman who had just sat down, on the question before the House, it was clear he did not esteem it so highly as the general principles of public spirit and patriotism; because, while he urged that this particular duty was of an exceptional character, he recommended that



onerous impost. The income tax, as surely as the year comes round, without distinction, reaches the pockets of the doctor, the surgeon, the barrister, the solicitor—the whole tribe of professional men whose incomes amount to 150*l*. But the solicitor alone is required annually to pay what is termed the certificate duty—which, in other words, is the licence to practice, and the means of his gaining his daily bread. The opulent man of business, the confidential family adviser, who knows the contents of every will and settlement in his neighbourhood, may scarcely condescend to notice the small sum of 12*l*. or 8*l*. which he is called upon to pay on the 15th day of November in each year; but in all professions there are the struggling beginners, who have fought their way to practice by honest industry, by good conduct and ability, and upon these the certificate duty is a heavy and an oppressive tax. The Legislature, it would seem, for many years has viewed, with a certain amount of nervous and suspicious dislike, the members of the lower branch of the Legal Profession. The profession of attorneys is said to date its existence from the Statute of the 2nd of Westminster, c. 10, passed in the year 1285. By that Statute, the attorneys were permitted to practice and defend any action in the absence of the parties to the suit; but it would seem that, with the progress of time, they but slowly advanced in the estimation of the public at large, for, by the 4th of Henry 4, c. 18, it is recited that there were “a great number of attorneys ignorant and not learned in the law, as they were wont to be before this time,” and it then ordains that ‘all attorneys shall be examined by the justices, and by their discretion their names put in the roll, and that they which be good and virtuous, and of good fame, be received and sworn well and truly to serve their offices.’ But the number of attorneys being greatly increased, and their popularity in the same proportion being diminished, the Act of the 33rd Hen. 6, recites, ‘that there is this complaint, that not long since, in the counties of Norfolk and Suffolk, there were only six or eight attorneys coming to the King’s Courts, in which time great tranquillity reigned in these places, and little vexation was incurred by untrue and unfeigned suits; but now there are in these places four score attorneys, or more, who have nothing to live on but their practice, and besides are very ignorant, &c.’ The Act being made out, this *prima facie* case against these gentlemen next provides, that their number for the future should be limited. Whatever the character of the attorney may have been in times long past, it cannot be doubted that there is scarcely any class which, within a comparatively recent period, has made such rapid strides in character, reputation, and general enlightenment. This result has been mainly produced by the establishment of a system of compulsory examination, and by the surveillance which the *Law Institution* has generally exercised over the conduct of the members of the Profession.

The higher branch of the Profession only obtained last year the benefit of a system of examination, thus following the example which had been set some ten or twelve years previously by the solicitors and attorneys. A tax of 12*l*. or 8*l*. may not be considered of any very large amount, but then it must not be forgotten that this is added to an enormously large stamp duty, which affords protection to the public against the admission of improper characters, and that a period of five years’ articleship has to be served before the young practitioner can commence the manufacture of his first bill of costs. The question, however, is not unattended with difficulty, for although Lord Robert Grosvenor last night succeeded in obtaining leave to bring in a bill to repeal the duty—a triumph which he has on several previous occasions achieved, but followed by no practical result—the Chancellor of the Exchequer very fairly stated, that considering the amount of the tax, he was bound to regard it in conjunction with the abolition of other taxes which might be submitted to his notice as proper for abolition. Although the noble lord was successful on a division, it is extremely doubtful whether he will be enabled to make any progress with his measure, for if this certificate duty be repealed, heavily as it presses upon a particular class, the banker, the auctioneer, the public-house keeper, the horse dealer, the pawnbroker, may come forward with claims for exemption, and if a precedent of this kind be once established, a void may be created in the revenue which the Chancellor of the Exchequer may find it extremely difficult to supply, without having recourse to other expedients more generally disagreeable than this certificate duty.”

The *Sun* of the 11th inst. has given an effectual answer to the argument of Mr. Gladstone that our application comes too early in the Session.

“The Chancellor of the Exchequer has received a very intelligible hint that, if he desires to save the Administration of which he is a member from defeat and dissolution, he must abandon the course in which Sir Charles Wood perversely continued, until it lead to the removal of Lord John Russell’s Cabinet from place and power. The public attention has been too forcibly directed to fiscal grievances to be contented with the stereotyped answer that a tax ‘produced so many thousands per annum to the Exchequer, which the financial Minister for the time being, or his *locum tenens*, is not prepared to relinquish;’ or the no less hackneyed objection against ‘*the time*’ at which the motion has been brought forward, which invariably is either ‘too early’ or ‘too late’—‘too early’ if introduced before the opening of the annual Budget; ‘too late’ for any practical purpose if postponed until after the discussion on the financial scheme. Right hon. gentlemen must entertain no very flattering notions as to the reasoning powers or the

integrity of popular representatives, if they really think that such ridiculous arguments can have any efficacy, or excite anything but contempt in the minds of those to whom they are directed. Englishmen have not yet learned to ignore every principle of justice and equity, nor will they sanction the continuance, any more than the creation, of an unfair impost. If Mr. Gladstone's arguments possessed any real weight—no antiquated abuse—no 'aged vice'—could ever be got rid of. It would be sufficient to show that, a grievance had subsisted for some 20 or 30 years to ensure its perpetuation.

"Mr. Gladstone's arguments did not, however, prevail last night. He was left in a very decisive, and unequivocal minority on a question of the repeal of the 'Attorneys' and Solicitors' Annual Certificate Duties.'

"We have so frequently exposed the gross and palpable injustice of this iniquitous impost, that it is almost a work of supererogation to adduce a single argument on the subject. Suffice it to say, that while no less than 150*l.* must be paid in stamp duties on the articles and admission, a further sum of 12*l.* is charged every year to Metropolitan Attorneys, while 8*l.*, or two-thirds of the former amount, is levied on country practitioners. Thus, assuming that the actual outlay for stamps were converted into an annuity, for which 10 per cent. or 15*l.* per annum could easily be obtained, we would find that each resident in London of the Profession contributes 27*l.* per annum to the Exchequer before he is enabled to exercise his industry, or gain a single shilling by his own exertions. After that he must pay income tax on his earnings at as high a rate as the proprietor of Three per Cent. Consols, or of well-circumstanced real estate. So that if we consider 300*l.* per annum as about the average professional earnings of solicitors—and we believe that the amount is by no means overrated, we find that each man pays nearly 39*l.* per annum, or 13 per cent. on his precarious and transitory income, while the more fortunate possessor of accumulated and realised property, which he can transmit to his children and his children's children, pays less than one-fourth of the amount in proportion to his actual receipts.

"It is no answer to state that solicitors are not worse off than others who are in like manner compelled to take out licences—more or less expensive—for liberty to pursue their trade or calling. Every one of those charges on industry are indefensible. They are worse than acts of confiscation; and can no more be justified than the assault of the highwayman who rifles his victim's pocket because he has the power to do so. Why should we complain if some attorneys be sharp practitioners. They merely reciprocate the dealings towards themselves by which they are treated with gross and palpable injustice."

## DIVISION ON ATTORNEYS' AND SOLICITORS' CERTIFICATE DUTY BILL.

MOTION made, and question put—"That leave be given to bring in a Bill to repeal the Attorneys' and Solicitors' Annual Certificate Duty."—(Lord R. Grosvenor.) The House divided—Ayes, 219, Noes, 167.

### MAJORITY—AYES, 219.

- |                        |                         |
|------------------------|-------------------------|
| *Adderley, C. B.       | *Duncombe, Hon. A.      |
| *Alcock, Thomas        | Duncombe Hon. O.        |
| Annesley, Earl of      | Dunlop, A. M.           |
| *Arkwright, G.         | *Egerton, W. T.         |
| Bagge, W.              | Egerton, Edward C.      |
| Ball, Edward           | *Evans, Sir D. L.       |
| Ball, John             | *Fagan, W. T.           |
| Bell, J.               | *Farrer, James,         |
| Bellew, Captain        | *Fellowes, Edward       |
| *Benbow, John          | Ferguson, Joseph        |
| *Beresford, William    | Fitzgerald, Jno. D.     |
| Berkeley, H. C. F.     | *Floyer, John           |
| Biggs, William         | Follett, Brent S.       |
| Blackett, J. F. B.     | *Forbes, William        |
| *Blake, M. J.          | Forster, Sir Geo.       |
| *Blandford, Marquis    | Fox, R. M.              |
| Booker, T. W.          | *Fox, W. J.             |
| Bowyer, George         | Fraser, Sir W. A.       |
| Bramston, T. W.        | *Freestun, Colonel      |
| *Bremridge, R.         | French, Fitzstephen     |
| Brooke, Sir A. B.      | *Freshfield, J. W.      |
| *Buck, Lewis W.        | *Frewen, C. H.          |
| Bulkeley, Sir R. B. W. | *Gallwey, Sir W. P.     |
| Buller, Sir J. Y.      | *Gaskell, J. M.         |
| Butler, Charles S.     | *Gooch, Sir E. S.       |
| Butt, Isaac            | *Goold, W.              |
| Cairns, H. M. Calmont  | *Grace, O. D. J.        |
| Carnac, Sir J. R.      | *Greene, John           |
| *Cayley, E. S.         | Greville, Col. F. S.    |
| Challis, Alderman      | *Grogan, E.             |
| Chambers, T.           | *Gwyn, Howel            |
| *Chaplin, W. J.        | Hadfield, George        |
| Child, Smith           | *Hall, Sir Benjamin     |
| Cholmondeley, Ld. H.   | *Hall, Colonel          |
| *Christopher, Rt. Hon. | *Halsey, Thomas P.      |
| R. A.                  | *Hamilton, Geo. A.      |
| Clinton, Lord C. P.    | Hamilton, J. Hans       |
| Clive, Robert          | Hanbury, Hn. C.S.B.     |
| Cobbett, J. M.         | Hardinge, Hon. C. S.    |
| *Cobbold, J. C.        | *Hastie, Alexander      |
| *Codrington, Sir W.    | *Herbert, H. A.         |
| Cogan, W. H. F.        | *Hogg, Sir James W.     |
| *Coles, H. B.          | *Hotham, Lord           |
| Collier, Robert P.     | Ingham, Robert          |
| Crook, J.              | *Jolliffe, Sir W. G. H. |
| *Cubitt, Mr. Ald.      | *Jones, Captain T.      |
| *Davies, D. A. S.      | *Keating, Robert        |
| Davison, R.            | Kelly, Sir F.           |
| Dering, Sir Edwd. C.   | Kendall, N.             |
| Du Cane, Charles       | Kennedy, Tristram       |
| *Duckworth, Sir J.     | *Kershaw, James         |
| T. B.                  | *King, P. J. L.         |
| *Duff, G. S.           | King, J. K.             |
| *Duff, James           | Kinnaird, Hon. A. F.    |
| Duffy, C. G.           | Katchbull, W. F.        |
| *Duke, Sir J.          | *Knox, Col. B. W.       |
| *Duncan, G.            | Lacon, Sir E.           |
| *Duncombe, T. S.       | Langton, W. H. G.       |

Langton, W. H. P. G.	*Sandars, G.	Biddulph, R. M.	Heathcote, Sir G. J.
Laslett, William	*Scholefield, W.	Blair, Colonel	Heathcote, Gilbert H.
*Lennox, Lord H. G. C. G.	Scobell, Captain G. T.	†Boldero, Colonel	Hervey, Lord Alfred
*Lewisham, Vis.	*Scott, Hon. F.	Bonham-Carter, Jno.	Howard, Hn. C. W. G.
Liddell, H. G.	*Scully, F.	†Bouverie, Hon. E. P.	Howard, Rt. Hon.
*Lindsay, Hon. Col. J.	Scully, V.	Boyle, Hon. Colonel	Lord E. G. F.
*Locke, J.	Seaham, Viscount	Brand, Hon. H.	Hume, J.
Lucas, F.	*Seymer, H. K.	Bright, John	Hutt, William
Luce, T.	*Shafto, R. D.	Brockman, E. D.	Irton, Samuel
Mackenzie, W. F.	Shee, W.	Brotherton, Joseph	Jocelyn, Viscount
Macgregor, James	Shelley, Sir J. V.	Brown, W.	Labouchere, Right
Maguire, J. F.	*Sibthorp, Colonel	Bruce, Lord E.	Hon. H.
Malins, R.	Smith, Wm. M.	Bruce, H. A.	Langston, J. H.
Mare, Chas. John	*Smyth, J. G.	Byng, Hon. G. H. C.	Lawley, Hon. F. C.
Massey, W. N.	*Spoonor, Richard	Campbell, Sir Arch. J.	Lockhart, A. E.
*Maunsell, T. P.	*Stafford, Augustus	Cardwell, Rt. Hon. E.	Lovaine, Lord
*Meagher, Thomas	S. O'B.	Caulfeild, J. M.	Lowe, Robert
*Miles, W.	Stanhope, James B.	Cavendish, G. H.	Lowther, Captain H.
Miller, T. J.	Stanley, Lord	Charteris, Hon. F.	Mackie, John
Mills, A.	Stanley, Hon. W. O.	Cheetham, John	M'Gregor, John
Michell, W.	*Stephenson, R.	Clay, Sir W.	M'Taggart, Sir J.
*Montgomery, H. L.	*Strickland, Sir G.	Clifford, Henry M.	Marshall, W.
*Moody, C. A.	*Stuart, Lord D.	Clinton, Lord R. P.	Matheson, Sir J.
*Morris, D.	*Sturt, H. G.	Cobden, Richard	Maule, Hon. Col. L.
*Mullings, J. R.	*Sullivan, M.	†Cockburn, Sir A. J. E.	Miall, E.
*Mundy, William	Taylor, Hugh	†Cocks, T. Somers	Milligan, R.
*Muntz, G. Frederick	*Thesiger, Sir F.	Coffin, Walter	Mills, T.
*Murphy, F. Stack	Townshend, Capt. J.	Cowper, Hon. Wm. F.	Milner, W. M. E.
Murrough, J. P.	Tudway, R. C.	Craufurd, E. H. J.	Milnes, R. M.
*Naas, Lord	Turner, C.	Crossley, Frank	Mitchell, T. A.
*Napier, Right Hon.	*Tyler, Sir G.	Currie, Raikes	Molesworth, Rt. Hon.
Joseph	Vance, J.	Dairymple, Viscount	Sir W.
Newark, Viscount	Vane, Lord A. F. C. W.	Davie, Sir H. R. F.	Moncreiff, James
*Newdegate, C. N.	Vansittart, G. H.	Denison, J. E.	†Monseil, William
North, Colonel	*Verner, Sir W.	Divett, Edward	Montgomery, Sir G. G.
Oakes, J. H. P.	Villiers, Hon. Francis	Drax, J. S. W. S. E.	Mure, Colonel W.
O'Brien, P.	J. R.	Drumlanrig, Viscount	Noel, Hon. Gerard J.
O'Brien, Sir Timothy	*Vyse, Rich. H. R. H.	Drummond, H.	Norreys, Lord
*O'Connell, Maurice	*Waddington, David	Dundas, G.	Olivera, B.
*Palmer, Robert	*Waddington, H. S.	Dundas, F.	Osborne, Ralph B.
Parker, R. T.	Walcott, Adm. J. E.	Egerton, Sir P.	Ossulston, Lord
Peacocke, G. M. W.	*Walmsley, Sir J.	Elliot, Hon. J. E.	Otway, A. J.
*Peel, Colonel J.	*West, F. R.	Emley, Viscount	Paget, Lord Alfred H.
Pellatt, A.	*Whiteside, James	Emlyn, Viscount	Paget, Lord G. A. F.
Percy, Hon. J. W.	Whitmore, Henry	Fitzgerald, W. R. S.	Palmerston, Viscount
Phinn, Thomas	*Williams, William	Fitzroy, Hon. Henry	Patten, J. W.
*Pilkington, James	*Willoughby, Sir H. P.	Gardner, Richard	Peel, F.
Potter, R.	Wise, J. A.	Gibson, Rt. Hn. T. M.	†Peto, S. M.
Price, W. P.	Wyndham, Gen. H.	Gladstone, Rt. Hon.	Phillimore, J. G.
*Prime, R.	Wynn, Herbert W. W.	William E.	Phillimore, R. J.
*Pugh, D.	Wynne, W. W. E.	Gladstone, Capt. J. N.	Pollard-Urquhart, W.
*Repton, G. W. J.	*Yorke, Hon. E. T.	Glyn, George Carr	Ponsonby, Hon. A.
Robertson, P. F.		Goodman, Sir G.	G. J.
Rolt, P.		Gordon, Hon. W.	Portal, Melville
Russell, F. W.		Goulburn, Rt. Hn. H.	Ricardo, J. L.
Sadler, James		Gower, Hon. E. F. L.	Robartes, T. J. A.
		Graham, Rt. Hn. Sir J.	Russell, Lord J.
		Greaves, Edward	Russell, F. C. H.
		Gregon, Samuel	Sawle, C. B. G.
		Grenfell, C. W.	Scrope, G. P.
		Grey, Rt. Hon. Sir G.	Seymour, Lord
		Hamilton, Rt. Hon.	Seymour, H. D.
		Lord C.	Shelburne, Earl of
		Hanmer, Sir J.	Smith, John Abel
		Harcourt, G. G. V.	Smith, M. Tucker
		Harcourt, Col. F. V.	Smith, Rt. Hon. R. V.
		Hastie Archibald	Smollett, A.
		Headlam, Thomas E.	†Sotheron, T. H. S.

The names marked thus \* voted previously for the Bill. The rest are new Members or voted now for the first time.

#### MINORITY—NOES, 167.

Acland, Sir T. D.	Baring, Rt. Hon. Sir
A'Court, C. H. W.	F. T.
Adair, H. E.	Bass, M. T.
Anderson, Sir James	Beaumont, W. B.
Baines, Rt. Hon. M. T.	Berkeley, C. L. G.
†Baring, H. B.	Bethell, Richard

Stansfield, W. R. C.  
 Stapleton, J.  
*Strutt, Rt. Hon. Edw.*  
 Tancred, Henry W.  
 Thicknesse, R. A.  
 Thompson, Geo., jun.  
 Thornley, T.  
 Towneley, C.  
 Tufnel, Rt. Hon. H.  
 Vane, Lord H. G.  
 Vernon, G. E. H.  
*Villiers, Hon. C. P.*  
 † Wall, C. B.  
 Walter, J.  
*Wellesley, Lord C.*

Whatman, James  
 Whitbread, Samuel  
 Wickham, H. W.  
 Wilkinson, W. A.  
*Wilson, J.*  
 Winnington, Sir T. E.  
 Wodehouse, E.  
*Wood, Rt. Hon. Sir C.*  
 Wyndham, William  
 Wyvill, M.  
*Young, Rt. Hon. Sir J.*

TELLERS.

*Hayter, W. G.*  
*Mulgrave, Earl*

The 35 Members holding office, who voted against the Bill, are printed in italics.

The 9 Members marked thus † voted for or paired in favour of the Bill in the last Parliament.

MEMBERS WHO PAIRED OFF.

For Against.

Bentinck, G. W. P.	Bruce, C. L. C.
Brown, H.	Coote, Sir C. H., Bart.
Deedes, W.	Ellice, Right Hon. E.
Farnham, E. B.	Ferguson, Robert
Heneage, G. F.	Hume, W. W. F.
Hildyard, R. C.	Hutchins, E. J.
Jackson, W.	Johnstone, Sir J. V. B.
Kingscote, R. N. F.	Macaulay, Rt. Hn. T. B.
Knox, Hon. W. S.	Mangles, R. D.
Lascelles, Hon. E.	Moffat, G.
Lennox, Lord A. F. C. G.	Paget, Lord G. A. F. <sup>1</sup>
Maddock, Sir T. H.	Portman, Hn. W. H. B.
Martin, John	Smith, J. B.

<sup>1</sup> Voted against the Bill.

MEMBERS ABSENT,

Who previously voted for, paired, or are in favour of the Bill.

No. 86.

Aglionby, H. A.	Dodd, George
Anson, Viscount	Dunne, F. P.
Archdall, M. E.	Du Pre, C. G.
Bailey, Sir J.	East, Sir J. B.
Baird, J.	Evans, William
Baldock, E. H.	Evelyn, W. J.
Banks, Rt. Hon. G.	Ewart, William
Barrington, Viscount	Fortescue, C. S.
Barrow, W. H.	Fuller, A. E.
Bateson, T.	Galway, Viscount
Bennet, P., jun.	Geach, C.
Berkeley, F. H. F.	Gilpin, R. T.
Booth, Sir R. G.	Goddard, A. L.
Brady, J.	Gore, W. O.
Brisco, M.	Granby, Marquis of
Brocklehurst, J., jun.	Greenall, G.
Burrell, Sir C. M., Bt.	Grosvenor, Earl
Butt, G. M.	Henley, Rt. Hn. J. W.
Cabbell, B. B.	Heywood, James
Compton, H. C.	Higgins, G. G. O.
Conolly, Thomas	Hill, Lord A. E.
Cotton, Hon. W. H. S.	Hindley, C.
Denison, E. B.	Hope, Sir J., Bart.
Disraeli, Rt. Hon. B.	Hudson, G.

Hughes, W. B.	Pechell, Sir G. R.
Keogh, William	Pennant, Hn. E. G. D.
Lawless, Hon. C. J.	Pigott, Francis
Layard, A. H.	Ricardo, O.
Leslie, C. P.	Rushout, G.
Long, W.	Sheridan, R. B.
Lopes, Sir R.	Somerset, E. A.
Lowther, Hon. H. C.	Thompson, William
Lytton, Sir E. B.	Trollope, Rt. Hn. Sir J.
M'Mahon, P.	Tynte, C. J. K.
Manners, Lord J. J. R.	Vyvyan, Sir R. R., Bt.
March, Earl of	Walpole, Rt. Hn. S. H.
Maxwell, Hon. J. P.	Welby, Sir G. E.
Moore, G. H.	Westhead, J. P. B.
Neeld, Joseph	Whalley, G. H.
Norreys, Sir C.	Williams, T. P.
O'Flaherty, A.	Worcester, Marquis of
Packe, C. W.	Wortley, Right Hon.
Pakington, Rt. Hon.	J. A. S.
Sir J. S.	Wrightson, W. B.

MEMBERS ABSENT,

Who voted or paired against the Bill on former occasions.

No. 39.

Anson, Hon. G.	Inglis, Sir R. H.
Baillie, H. J.	Jermyn, Rt. Hon. Earl
Beckett, W. J.	Legh, G. C.
Berkeley, M. F.	Lemon, Sir C.
Burke, Sir T. J.	Lewis, Rt. Hon. Sir
Cavendish, Hon. C. C.	T. F.
Christy, S.	Matheson, A.
Clive, Hon. R. H.	Mostyn, Hon. E. M. L.
Colville, C. R.	Owen, Sir John
Corbally, M. E.	Pendarves, E. W. W.
Corry, Rt. Hon. H. T. L.	Pinney, W.
Crowder, R. B.	Powlett, Lord W. J. F.
Euston, Earl of	Rice, E. R.
Fergus, John	Rich, H.
Ferguson, Sir R. A.	Roche, E. B.
Foley, J. H. H.	Rumbold, C. E.
Forester, Rt. Hon. G.	Stuart, H.
C. W.	Sutton, J. H. M.
Forster, M.	Vivian, J. H.
Herbert, Rt. Hon. S.	Willcox, B. M.
Heyworth, L.	

MEMBERS WHO HAVE NOT VOTED  
 On any of the Divisions.

No. 100.

Alexander, John	Chelsea, Viscount
Arbuthnott, Hon. H.	Dashwood, Sir G. H.
Atherton, W.	Dent, J. D.
Bailey, C.	Devereux, J. T.
Baring, Hon. F.	Dod, J. W.
Baring, T.	Duncombe, Hon. W. E.
Barnes, T.	Dunne, M.
Bentinck, Lord H.	Ellice, E., jun.
Berkeley, Sir G. H. F.	Esmonde, J.
Bernard, Viscount	Filmer, Sir E.
Bland, L. H.	Fitzgerald, Sir J. F.
Brooke, Lord	Fitz-William, Hon. G.
Browne, V. A.	W. W.
Burghley, Lord	Fitz-William, Hon. G.
Burroughes, H. N.	W.
Chambers, M.	Forster, C.
Chandos, Marquess of	Franklyn, G. W.

George, J.	Monck, Viscount
Graham, Lord M. W.	Moore, R. S.
Guernsey, Lord	Moreton, Lord
Hale, R. B.	Morgan, C. R.
Halford, Sir H.	Neeld, John
Hawkins, W. W.	Newport, Viscount
Hayes, Sir E. S., Bart.	O'Brien, C.
Heard, J. J.	Pakenham, E. W.
Heathcoat, John	Peel, Sir R.
Heneage, G. H. W.	Phillips, J. H.
Henchy, D. O'C.	Powell, W. E.
Herbert, Sir Thomas	Power, N. M.
Herries, Rt. Hon. J. C.	Price, Sir R.
Johnstone, James	Roebeck, J. A.
Jones, D.	Seymour, W. D.
Keating, H. S.	Smith, Sir W. B.
Kerr, D. S.	Smyth, R. J.
Kerrison, E. C.	Stafford, Marquis of
Kirk, W.	Stirling, W.
Knight, F. W.	Swift, R.
Knightley, R.	Talbot, C. R. M.
Laffan, R.	Taylor, T. E.
Laing, S.	Tollemache, J.
Lefevre, Rt. Hon. C. S.	Tomline, G.
Lockhart, W.	Traill, G.
Lovedon, P.	Tyrell, Sir J. T.
Macartney, G.	Vivian, J. E.
M'Cann, James	Vivian, H. H.
Magan, W. H.	Walsh, Sir J. B.
Mandeville, Viscount	Warner, E.
Manners, Lord G. J.	Wells, W.
Masterman, John	Wigram, L. T.
Meux, Sir H., Bart.	Woodd, B. T.
Milton, Viscount	Wynn, Sir W. W.

## SEATS VACANT.

Lancaster . . . . .	1
Canterbury . . . . .	2
Blackburn . . . . .	1
Clitheroe . . . . .	1
Bridgnorth . . . . .	1
Cambridge . . . . .	2
Hull . . . . .	2
Rye . . . . .	1
Chatham . . . . .	1
Carlow County . . . . .	1
London . . . . .	1

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## SUMMARY OF THE VOTES FOR AND AGAINST THE BILL.

Members who voted this Session for leave to bring in the Bill . . . . .	219
Ditto, against . . . . .	167
Tellers . . . . .	4
Pairs . . . . .	26
Members absent who previously voted for, paired, or are in favour of the Bill . . . . .	86
Members absent who voted or paired against the Bill on former divisions . . . . .	39
Members who have not voted on any division . . . . .	100
Seats vacant . . . . .	14

[3 members returned for Knaresborough] 655

## REGISTRATION OF ASSURANCES BILL.

HEADS OF LORD ST. LEONARDS' SPEECH.  
—REASONS AGAINST THE BILL.

As already observed (*ante*, p. 369), the masterly speech of Lord St. Leonards upon the second reading of the Lord Chancellor's Bill, owing to accidental circumstances, was not fully reported, and it is feared may be considered to some extent as lost to the public.<sup>1</sup> The numerous objections which Lord St. Leonards urged against the measure necessarily took some time to state and explain; but so many serious objections are not often propounded and illustrated in the course of a single speech, and perhaps, in modern debates, no instance could readily be pointed out in which the talent for compression was exercised with so much judgment and effect. The difficulty of making a concise analysis of a statement so suggestive, is considerable, but we believe the following are the main grounds stated by the noble and learned lord for dissenting from the second reading of the Bill as at present framed:—

Because the Bill as at present framed benefits no man's present title, and saves no man a shilling.

Under the Bill the present proprietors of property will hold under *two* titles.

The title deeds of property are taken by the Bill out of the control of the owners, who will have to pay for seeing their own deeds.

The experiment of registering titles has already been tried and failed in Yorkshire, Middlesex, Scotland, and Ireland.

The present Bill affords no additional security to purchasers.

Two distinct titles of the same property may be registered under this Bill.

The Bill does not make adequate provision for the identification of property registered.

Maps of property would be useless, as the face of the country is subject to constant changes.

An index of names would be useless, proprietors of the same name are so numerous.

The Commissioners, to whom the matter

<sup>1</sup> If Lord St. Leonards could be induced to correct the newspaper report of his speech, so that it may be published in a cheap form for circulation, it would materially assist the due consideration of the Bill, which seems even now to be ill understood.

was referred, decided that the Bill in its present shape could not work.

The Bill is denounced by the solicitors, although its immediate effect will be to increase their emoluments.

The Bill will increase expense without any corresponding benefit to the landed proprietors.

The Bill does not assist titles in any respect.

The Bill does not shorten the abstracts of titles by a single word.

Under the present system important deeds are never suppressed.

Under the proposed system a mistake in the name, by the registry clerk, would destroy a title.

Deeds may be lost by the porters in the Registry Office.

The injured parties to be indemnified out of the consolidated fund.

The Bill will enormously increase the expense of *small* purchases.

The Bill will produce unnecessary delays in the completion of purchases.

Instruments registered will refer to a trust without showing what the trust is.

The real transfer will appear on the registry when the real title will not appear on it.

The purchaser will be deprived of the protection the law now affords him.

The Bill does not simplify the law of property in any particular.

If the purchase is not registered a mortgage may be enforced.

The mortgagee, who knew the land was mortgaged, may find it has been sold.

Clerks sent to register deeds may neglect so to do.

A vast expense will be entailed by the proposed system of registration.

The Bill affords great facilities for the forgery of deeds.

There is no certainty afforded that the deed registered is a real deed, and not a forgery.

The register compels a disclosure of the transactions of private life.

It discloses the date, the names of parties, and the effect of a conveyance.

It interferes injuriously with the equitable doctrine of notice.

Such are the leading grounds which, in the judgment of Lord St. Leonards, justify in opposition to the Bill, and if any considerable proportion of those objections are well founded, the apprehension and disaffection with which the measure is regarded in professional circles, are sufficiently accounted

for. We would again remind those who oppose the Bill, however, that as the measure is now brought forward by the Lord Chancellor, as the organ of the Government, neither its intrinsic demerits, nor the lack of support it receives from the public, will retard its progress. It can only be defeated by an organised and united opposition, which it is hoped may be prepared by the time the Bill reaches the House of Commons.

## SUITORS' IN CHANCERY BILL.

### TAXES ON JUSTICE.

THE 9th section of this Bill forms a retrograde movement after the Statute of last Session, 15 & 16 Vict. c. 87, s. 16, by which the salaries of the Lord Chancellor and other Equity Judges were properly transferred to the consolidated fund.

The Bill now in the Select Committee of the House of Lords, proposed to empower the Lord Chancellor, *when the fees of office are reduced as far as may be deemed expedient in the due administration of justice*, to direct that the salaries of the Judges may be paid out of the Suits' Fund, and the consolidated fund so far relieved!

Surely this clause must have crept into the Bill by mistake. However this may be, we understand, if it should come out of the Select Committee, it will be resisted in all its stages, as it ought to be, in both Houses.

## BANKRUPTCY BILL.

### ATTORNEY-ADVOCATES.

THE 39th section of this Bill proposes to prohibit solicitors from employing other solicitors as their agents in the Bankruptcy Courts, and in effect to repeal the 12 & 13 Vict. c. 106, s. 247, and the several previous Acts, by which solicitors were expressly authorised to "appear and plead, without employing counsel," as in fact had been the practice from time immemorial under the Bankrupt Laws.

Surely such an enactment can never pass! The Judges of the Superior Courts, both of Law and Equity, are attended by solicitors and their agents, and the recent Acts have extended the jurisdiction at Chambers. Is it not monstrous that in a Court, comparatively inferior, and essentially dealing with insolvent estates, the creditor, or bankrupt, should be

compelled, *nolens volens*, to incur the expense of briefs and fees to counsel, when their solicitors are fully competent from their familiar acquaintance with commercial accounts to advocate their clients' interests at a moderate expense? The learning and eloquence of the Bar are surely sufficient to secure their employment, whenever needed, without statutory enactments, which really will not mend the matter,—for if the creditors cannot obtain professional assistance in ordinary cases, without the costly aid of counsel, there will be a denial of justice. Not a brief more will result from this suggested legislation.

## CHANCERY SUITORS' GRIEVANCES.

### POWERS OF ATTORNEY.

*To the Editor of the Legal Observer.*

SIR,—Pray exert your influence again in calling attention to the heavy payment obliged to be made for a power of attorney in the Accountant-General's Office for so small a cheque as 20*l*. The stamp still remains the same (*viz.* 30*s.*). In the late table of fees issued in October, 1852, the fee for drawing the power of attorney and affidavit was reduced from 5*s.* 6*d.* to 3*s.* 6*d.* If this latter sum is considered sufficient for the trouble taken, does it not seem hard that so large a sum must still be deducted in consequence of the inability of the party himself to attend to receive his money?

E. C.

## REMUNERATION OF SOLICITORS.

We deem it expedient that our readers should be fully informed of the views entertained by the members of the Bar, or gentlemen practising *under* the Bar, who form the Special Committee of the Law Amendment Society on "the relation between the Barrister, the Attorney and the Client."

We stated in our last Number some of the premises and conclusions of the Committee, and now extract some further remarkable passages from their report:—

"The items charged for by an attorney are not like the items in a tradesman's bill, each of which consists of some useful article actually supplied; but in the attorney's bill, the several items are only the component parts of the useful whole required. The attorney charges in distinct sums for attendances, for drawing, for copying, for parchment, for engrossing, for stamp, and for stamping; and the whole results in the one useful article required, *e. g.* a lease. Among such charges, it will be observed, some are for skilled labour, *viz.* the attendances, drawing, &c.; some are for what

we may fairly call unskilled labour, *viz.* the copying and engrossing; and the rest for goods and materials supplied, and the stamp. And your Committee propose to show presently that the charges for what they have termed unskilled labour are high, out of all proportion either to the payment for professional skill (which is of a far higher order of merit), or to the real value of such services. In the meantime, whatever branch of law is selected, whether Common Law, Equity, or Conveyancing, it will be found that an attorney's bill always resolves itself into these three heads:—

"The attorney's and his clerk's professional skill, time, and trouble.

"Copying and engrossing.

"Money paid for fees and stamps, &c., and materials supplied.

"Your Committee think it cannot be doubted that the system of charging for every separate step, and, as to documents, by the length, as they have described it, holds out to the practitioner the strongest possible inducement to multiply steps in the suit or other proceeding in hand, to draw the greatest possible number of documents and copies in the course of such suit or proceeding, and to make such documents of the utmost length. This, they think, is the natural and obvious tendency of the system; but they proceed to consider whether such a temptation or inducement does in fact operate to produce such effects; in order to which they must justify their assertion as to the charges for copying and engrossing.

"To estimate the value of a commodity, the usual and certainly only fair practice is to find out its *market price*.' The charges allowed on taxation will, of course, afford no criterion as to the value of copying and engrossing, inasmuch as the same sum is charged by all alike. There is, however, a simple method of discovering their worth when subjected to 'unrestricted competition' (which may now be perhaps considered the universal law),—it is by consulting a list of the charges of the law stationers. And your Committee, on inquiry, find that a respectable London law stationer would charge as follows:—For fair copies of drafts, &c., 2*s.* per twenty folios; for engrossments on paper, 1½*d.* per folio; ditto on parchment, 2*d.* per folio; briefs and abstracts, per sheet, 1*s.*; skin of parchment stamped, 3*s.* 6*d.*; unstamped, 3*s.* To compare these charges with those of the attorney, the following table is given, in which the latter are selected from 'Dax's New Book of Costs.' (London. 1847):—

<sup>1</sup> We have been asked, what is the "market price" for signing a bill in Chancery, and have been told that a fee of half-a-crown has been accepted!—ED.

"Table showing the Comparative Cost of Copying and Engrossing as charged by Solicitors and Law Stationers.

		Charges.			
		Of Solicitor.		Of Law Stationer.	
		£	s. d.	£	s. d.
Fair copies of abstract, per sheet . . . .	Dax, 461 . . .	0	3 4	0	1 0
Briefs, <sup>1</sup> per sheet . . . . .	Dax, 108, 117	0	3 4	0	1 0
Engrossing indenture on parchment, per folio . . . .	Dax, 462 . . .	0	0 8	0	0 2
	Dax, 461, 58, 62, 108				
Fair copies of drafts in Conveyancing and Pleadings, &c., whether on reduced or higher scale, per folio . . . . .	Chitty's Directions to the Masters, p. 65	0	0 4	0	0 1 <sup>1</sup> / <sub>10</sub>
Parchment unstamped, per indenture skin . . . .	Dax, 463 . . .	0	5 0	0	3 0
Stamped parchment . . . . .	. . . . .	. . . . .		0	3 6
The Solicitor charges commonly 6s. 8d. for attending the Stamp-office.					

"This table, it will be observed, comprises most of the ordinary charges for copying and engrossing in Conveyancing and Common Law proceedings; and it shows that the attorney charges, and is allowed on taxation, sums varying from three and one-third to four times the amounts charged by the law stationer; that is, from three and one-third to four times the market value of his commodity. And your

Committee feel the more bound to put this fact prominently forward, inasmuch as the Judges have, so lately as in Hilary Term, 1853, in their directions to the Taxing-Masters, expressly authorised this rate of payment.

"To show the mode in which this operates, an analysis of a few of the regular charges for some of the ordinary proceedings is given, beginning with—

"A Solicitor's Bill of Costs, for a Common Lease of Thirty Folios on Two Skins."

	Solicitor.			Charges of Law Stationer, if done by him.
	Professional Skill.	Copying.	Moneys Paid, &c.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Attending you on your instructions to take a lease of, &c. . . . .	0 6 8			
Attending you again, and instructions for lease . . .	0 6 8			
Drawing the same, 2 skins (=30 folios), at 1s. per folio . . . . .	1 10 0			
Fair copy of ditto at 4d. per folio . . . . .	— — —	0 10 0	— — —	0 3 0
Attending you, reading over same, and comparing . .	0 6 8			
Engrossing same, 2 parts, at 8d per folio . . . . .	— — —	2 0 0	— — —	0 10 0
Attendances, and completing same . . . . .	0 13 4			
Letters and messages . . . . .	— — —	— — —	0 2 6	
Paid stamps 10s., 10s., and 7s. 6d . . . . .	— — —	— — —	1 7 6	
Parchment, 2 skins . . . . .	— — —	— — —	0 10 0	0 7 0
Attending Stamp Office . . . . .	— — —	— — —	0 6 8	
	3 3 4	2 10 0	2 6 8	1 0 0
			2 10 0	
			3 3 4	
Total . . . . .			8 0 0	

\* "The charge by the new directions of Hilary Term, 1853, is 4d. per folio."

\* "This bill (as also that for a Declaration,) was kindly drawn out by a solicitor for the Committee!"



"This bill, therefore, contains 3*l.* 3*s.* 4*d.* for the solicitor's professional skill; 2*l.* 10*s.* for copying; and 2*l.* 6*s.* 8*d.* for materials, moneys paid, &c. And of this, 1*l.* 10*s.* only is for the preparation of the important document itself. Now if 1*l.* 10*s.* be a sufficient remuneration for drawing the document, surely 2*l.* 10*s.* must be more than a proportionate remuneration for its transcription and engrossment. And the truth of this will be seen by inspection of the column in which the law stationer's charges are contained.

"Supposing, then, that the skilled labour is properly charged for, it appears that by taking the law stationer's charges for the unskilled, and striking off the attendance at the Stamp Office (which, in fact, seldom if ever takes place), the saving effected will be as follows:—On the copying and engrossment, 1*l.* 17*s.*; on the parchment, 3*s.*; and the 6*s.* 8*d.* for the attendance; making 2*l.* 6*s.* 8*d.* on the whole—a saving, that is, of 29½ per cent.<sup>4</sup>

<sup>4</sup> We should have thought the true question was, whether the solicitor was paid too much on the whole for his skill, labour, and responsibility?

[To be continued.]

## NOTES OF THE WEEK.

### RESULT OF THE VOTES IN THE NEW PARLIAMENT ON THE CERTIFICATE DUTY.

Adding to the 219 members who voted for the Bill on the 10th of March, those who voted on former occasions, or who paired off in favour of the Bill, the number in support of the measure is . . . . . 318

Deducting 167 votes against the Bill and former votes and pairs, making . . . . . 223

The actual majority at present is . . . . . 95

Thus, of the present Parliament, no less than 541 members have recorded their votes, leaving only 100 who have not voted on either side,—a large majority of whom it is confidently expected will also support the Bill.

It is also observable that the Cabinet Ministers and other holders of office, to the number of 35, were all in their places and voted against the Bill, and that 9 members who previously voted for it, on the present occasion voted against the repeal. On the result, it appears that at least two-thirds of the House are in favour of the Bill.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lords Justices.

*Church Building Society v. Barlow.* March 7, 1853.

CHARITABLE BEQUEST.—STATUTE OF MORTMAIN.—SOCIETY FOR BUILDING CHURCHES.

*A testator gave to the Society for Building Churches a sum of money, equal to a certain amount of 3 per cent. reduced bank annuities, which he expressly charged on such part of his personal estate as he could by law charge with the payment thereof. The society in question was incorporated under the 9 Geo. 4, c. 42, which only empowered the company to repair, enlarge, or build churches on land already in mortmain: Held, that the legacy was valid and not within the Statute as tending to bring land into mortmain.*

THE testator, John Brown, by his will, dated in May, 1846, gave to the Society for Building Churches such a sum of money as should be equal to the average market price or value of 5,500*l.* 3 per cent. reduced bank annuities on the day next before that on which the executors should pay the same. The testator expressly charged the charitable bequests in his will on such part of his personal estate as he could by law charge with the payment thereof, and exonerated all his other property from payment of the same. It appeared this society was incorporated under the 9 Geo. 4,

c. 42, and the executors now questioned whether the bequest was not void under the Statute of Mortmain, as tending to bring land into mortmain.

*Rolt and Speed* for the plaintiffs; *Walker and Bird* for the executors.

The Lords Justices said, that as the Act incorporating the society had not given any express power to the company to purchase land, but only to repair, enlarge, or build churches on land already put in mortmain, such a power could not be implied, and it was also provided by the Act that the committee of management were not to make any regulations as to the dealings of the society which should be repugnant to the laws of the land. The legacy was therefore valid and must be paid to the society.

March 9.—*Pennell v. Roy*—Order for injunction discharged.

—9.—*In re Probert's Estate*—Vesting order under the 14 & 15 Vict. c. 60, refused.

—9, 10.—*Turner v. Blamire*—Appeal dismissed from Vice-Chancellor Kindersley.

—11.—*In re Leake, ex parte Warrington*—*Cur. ad. vult.*

—12.—*Attorney-General v. Wyggeston Hospital*—Petition struck out of the paper, with liberty to apply.

—14.—*In re Great Western and City Junction Railway Company, ex parte Lord De*

*Mauley and others*—Order for payment of money out of Court.

Mar. 14.—*Richmond v. Jefferies*—Costs of claim for administration to come out of estate.

— 14.—*Countess of Mornington v. Earl of Mornington*—Judgment on further directions and costs.

— 15.—*Earratt v. M'Dermott*—Part heard.

### Master of the Rolls.

*Dean and Chapter of Ely v. Hensley.* Feb. 14, 1853.

JURISDICTION IN EQUITY IMPROVEMENT ACT.—ORDER TO REVIVE.—DEATH OF SOLE DEFENDANT.

Held, that under the 15 & 16 Vict. c. 86, s. 52, a plaintiff upon the death of a sole defendant is only entitled to an order to revive and to be enabled to carry on the suit as if such defendant's executors were original parties thereto, and cannot also call on them to admit assets, or for the common account to be issued.

It appeared that the plaintiffs had proceeded, upon the death of the sole defendant after appearance and before decree, to obtain the common order to revive as against his executors under the 15 & 16 Vict. c. 86, s. 52.

*Fleming* now appeared for a direction to the Registrar to draw up the order for the revival of the suit against such executors, and that they should admit assets, or for the common account to be taken.

The Master of the Rolls said, the plaintiffs were only entitled under the Act to an order to revive and to be enabled to carry on the suit against the executors as if they had been original parties, and the application was accordingly refused.

March 9.—*Attorney-General v. Armstrong*—Inquiry directed as to management of charity and for account.

— 9.—*Pennell v. Deffell*—Exceptions allowed to the Master's report.

— 10.—*Edwards v. Tuck*; *Same v. Sutton*—Clause for accumulations held void.

— 11.—*Weddcoll v. Nixon*—Decree for specific performance.

— 12.—*Mudge v. Futvoye*—Judgment for the plaintiff—costs reserved.

— 12.—*Richards v. Scarborough Market Company*—Order of course discharged, with costs.

— 12.—*Ratcliffe v. Winch*—Injunction granted to restrain action in County Court.

— 12, 14.—*Duke of Beaufort v. Patrick*—*Cur. ad. vult.*

— 14, 15.—*M'Cleod v. Annesley*—Decree for account, with costs.

### Vice-Chancellor Kindersley.

*Thornhill v. Thornhill.* March 11, 1853.

MASTERS' ABOLITION ACT.—REFERENCE TO APPROVE OF CONVEYANCE FOR EXCHANGE OF INFANT'S LAND.

On a petition to obtain the sanction of the Court to an agreement by the guardians of an infant for the exchange of land, and to approve of a conveyance, a reference was directed to the Master according to the former practice,—it being a *casus omissus* in the 15 & 16 Vict. c. 80, ss. 40, 41.

THIS was a petition to obtain the sanction of the Court to an agreement entered into by the guardians of an infant for the exchange of land near Huddersfield under a private act of Parliament which had been obtained for the purpose, and for the settlement of a proper deed of exchange.

*Russell and Renshaw*, in support, said, that under the 15 & 16 Vict. c. 80, ss. 40, 41, a reference could only be made to the conveyancing counsel in cases of sales or mortgages, and that a reference must be made to the Master under the old practice.

*Hardy* for other parties.

The Vice-Chancellor said, it was evidently a *casus omissus* in the Act, and that the best plan would be to send the matter to the Master who would approve of a deed of exchange prepared by the conveyancer of the parties according to the usual course.

*Taylor v. Austen.* March 12, 1853.

BEQUEST.—CONSTRUCTION.—TO DAUGHTERS ON MARRYING WITH TRUSTEES' CONSENT.

*Certain property was given to trustees on trust to be paid to the testator's daughters on their attaining 21 or marriage with the trustees' consent, and the trustees were empowered in the event of their marrying under age with their consent to settle their respective shares on them and their children: Held, that a daughter who married under age and without consent was not entitled to payment until she attained 21.*

THE testator, by his will, gave his property to trustees therein named on trust for his daughters to be paid to them on their attaining the age of 21, or upon their marriage under that age with the trustees' consent. There was also a provision that if any of the daughters married under age with the trustees' consent, they might pay it over at once or at their discretion settle it on her and her children. It appeared one of the daughters married under age and without the consent of the trustees, who now filed this bill for a settlement on her of her property.

*J. Bailly and Hare* for the plaintiffs; *Drewry* for the defendants.

The Vice-Chancellor said, that as the daughter had married without consent, she was not entitled to payment until she attained 21.

March 9, 10.—*Ind v. Wightwick*—*Cur. ad. vult.*

— 10.—*Vaughan v. Vanderstegan*—Stand over.

Mar. 12.—*In re London Conveyance Company*—Stand over to 1st day of Easter Term.

— 12.—*Ruck v. Barwick*—Judgment as to allowance to Indian trustees.

### Vice-Chancellor Stuart.

*Vincent v. Godson*. March 15, 1853.

ADMINISTRATION SUIT.—RIGHT OF LANDLORD OF PREMISES HELD UNDER AGREEMENT OF LEASE AS SPECIALTY CREDITOR.

*A testator held property under an agreement for a lease, which should contain the usual and proper covenants, and he entered into possession, but had never paid any rent nor executed the lease in accordance with the agreement: Held, allowing an exception to the Master's report on a reference in an administration suit, that the lessor was not entitled to rank as a specialty creditor in respect of the arrears of rent,—the relation of landlord and tenant not existing under such agreement.*

By an agreement dated October, 1847, Lord Ward agreed to grant, and the testator in this administration suit, agreed to accept, at the yearly rent of 2,000*l.*, a lease of certain plantations in Jamaica, for the term of 21 years determinable by either party at the end of the first 10 or 15 years, and that the lease should contain all usual and proper covenants. It appeared that no rent had been paid, although the testator entered into possession and continued to occupy until his death in August, 1849, and that possession was given up to Lord Ward in December following. No lease had been executed of the premises in accordance with the agreement. The Master having reported on the reference to take accounts, that Lord Ward was entitled to the arrears of rent as a specialty creditor, exceptions were taken thereto.

*Swanston and Goodeve* in support; *Malins and Renshaw*, contra.

The Vice-Chancellor, after referring to *Clough v. French*, 2 Coll. 277; *Dunk v. Hunter*, 5 B. & Ald. 322, and *Way v. Yalley*, 2 Salk. 651, said, that as in the present case there were no words in the agreement by way of present demise, the remedy of the landlord was simply dependent on the Law of Contract, and did not subsist by force of the relation of landlord and tenant, and that Lord Ward was therefore not entitled to rank as a specialty creditor in respect of the arrears of rent, and the exception must accordingly be allowed.

March 9.—*Wildes v. Davis*—Part heard.

— 10.—*Simpson v. Chapman*—Inquiries and accounts directed in administration suit.

— 11.—*Fowler v. Reynal*—Judgment on further directions and costs.

— 11.—*Mossop v. Morris*—Judgment on further directions and costs.

— 12.—*Hopkins v. Alliot*—Bill dismissed without costs.

Mar. 14.—*Watson v. Alcock*—Injunction granted to restrain action at law.

— 14.—*Parker v. Rooke*—Judgment on further directions and costs.

### Vice-Chancellor Maule.

*Sidebottom v. Watson*. Feb. 25, 1853.

TURNER'S ACT. — LEAVE TO SET DOWN A SPECIAL CASE FOR ARGUMENT.—MARRIED WOMAN.

*Leave granted to set down a special case for argument, under the 13 & 14 Vict. c. 35, where one of the defendants was a married woman.*

*And semble, such leave is necessary, under s. 13, where any of the parties are under disability.*

THIS was an application under s. 13 of the 13 & 14 Vict. c. 35, for leave to set down a special case for argument, where one of the defendants was a married woman.

By s. 13 of the Act, it is provided that "when any married woman, infant, or lunatic, is party to a special case, application may be made to the Court by motion, for leave to set down the same, of which motion notice shall be given to every party to such case in whom, as executor, administrator, or trustee, any property in question therein is or is alleged to be vested in trust for or for the benefit of such married woman, infant, or lunatic, to such married woman and her husband, or to such infant, or to such lunatic and his committee, if any, as the case may be; and that upon the hearing of such motion, the said Court may give leave to set down such case, if it shall be of opinion that it is proper that the question raised therein shall be determined thereon, and shall be satisfied by affidavit, or other sufficient evidence, that the statements contained therein, so far as the same affect the interest of such married woman, infant, or lunatic, are true, but otherwise may refuse such application."

*Prendergast*, in support, said the statements were duly verified, and the question was a proper one to be argued, but that a question had arisen whether it was not sufficient to produce the affidavit to the registrar without mentioning it in Court.

The Vice-Chancellor, in making the order, held that the case had been properly mentioned to the Court.

March 9.—*Downville v. Lamb*—Appointment under power held valid.

— 10.—*Alston v. Eastern Union Railway Company*—Stand over.

— 10.—*Buckley v. Cooke*—Part heard.

— 11.—*Havens v. Middleton*—Objection overruled as to title.

— 12.—*In re Bedford Charities*—Order for taxation and payment of trustees' costs.

— 9, 14.—*Earl of Lindsey v. Great Northern Railway Company*—Injunction granted.

— 15.—*Atchison v. Le Mann*—Part heard.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MARCH 26, 1853.  
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## LAW OF EVIDENCE AND PROCEDURE BILL.

### LORD CRANWORTH'S SPEECH ON THE SECOND READING.

THE Lord Chancellor already shares the fate of every cautious and considerate Law Reformer. He is accused of being behind *the time*, of obstructing the spirit of progress, and of a thousand other vague misfeances, of which the true meaning is, that he does not lend himself, and will not resign his own judgment, to those who think that the essence of all good is to be found in perpetual change! Hence, we find it industriously whispered about—though doubtless without any shadow of foundation beyond the wishes of those who propagate the rumour—that Lord Cranworth does not give entire satisfaction to the leading members of the Cabinet with which he is associated, and attention is constantly directed to her Majesty's Solicitor-General as "the coming man." Sir Richard Bethell has the good fortune to have it supposed, with or without authority, that he has a goodly flotilla of Legal Reforms, on the stocks ready to be launched, whenever his position renders it desirable, and his friends are not backward in anticipating his elevation to the Woolsack, as if it were an event already determined upon.

Humbly, but decidedly differing from the Lord Chancellor, upon the Registration of Assurances' Bill, and some other measures to which he has given the weight of his authority, it is impossible not to appreciate the discretion, candour, and good sense, he has evinced, upon some recent occasions, amongst which we may instance, the debate upon Lord Brougham's motion for the second reading of the Law of Evidence and Procedure Amendment Bill.

Our readers are already in possession (see *ante* p. 105) of the leading provisions of this Bill, and must participate in the general desire to be informed how far the more important provisions meet the approval of the noble lord, who from his position at the head of the legal department, may be considered upon such matters to represent the Government? Lord Brougham, upon moving the second reading of the Bill, adverted especially to *three* of the changes it was intended to effect, and argued with his accustomed eloquence and ability, that all those changes were eminently deserving of consideration and legislative support. The clauses specially selected for discussion involve the following propositions:—

1st. That the husbands and wives of parties, in all civil actions, shall be competent and compellable to give evidence, with this modification, that husband or wife shall not be examined upon matters communicated by the one to the other during coverture.

2ndly. It is proposed, that a witness shall not be excused from answering *any* question upon the ground that the answer may tend to criminate him.

3rdly. That in all courts, and in all civil actions, the parties should be allowed the option of having their cases tried by the Judge without the assistance of a jury.

Upon all the proposed changes Lord Cranworth pronounced his opinion with clearness and readiness. As to the first proposal, he thought, the exceptive provision introduced into the Act 14 & 15 Vict. c. 99, might be repealed with benefit to society, and that many of the difficulties felt on the subject would be removed by the clause now introduced, providing that notwithstanding the authority given to examine a wife for or against her husband, or a husband for or against his wife, no

husband or wife should be compellable to disclose what was communicated in domestic confidence. The communications between husband and wife, his Lordship observed, would be placed by the Bill, on the same footing as communications made by a client to his solicitor, which the latter was not required to disclose. His Lordship also adverted to what has been felt by every person practically acquainted with the operation of the Act last referred to, as an anomaly, if not an injustice, that, as the law now stands, the wife of a plaintiff acting as a shopwoman, or an agent, is prevented from giving evidence of necessity within her knowledge, and not at all within the knowledge of the husband; but the effect of marital influence and the social consequences arising from its abuse, when a wife is liable to be examined for or against her husband, appear to have been lost sight of in the discussion. This part of Lord Brougham's Bill would seem, therefore, to have met not only the acquiescence but the approval of the Lord Chancellor.

On the next proposition, to compel witnesses to answer questions tending to criminate them, the Lord Chancellor is reported to have thus expressed himself:—

"I entirely concur in the feeling which has prompted my noble and learned friend to endeavour to devise some method of getting out of the difficulty, arising from that provision of the Law of Evidence, exempting a party under examination from the obligation of answering questions that may tend to criminate him; for, in common, I am sure, with all who have been in the habit of attending Courts of Justice, or of taking part in the proceedings in such Courts, I have continually been shocked by the certainty that injustice was done, and truth was excluded, because a witness said, 'I cannot answer that question, for it will tend to criminate me.' I feel bound to say, however, that until we are prepared to alter the law a great deal more, and to say that it should be part of our system to interrogate prisoners upon charges, I do not think the clause proposed by my noble and learned friend can by possibility become the law of the land. If it is the law that a person charged with picking a pocket has a right to say, 'You are not to ask me any questions; I will answer nothing; prove the charge if you can;' will it not be a strange anomaly if we evade that law by calling the accused person as a witness in some other proceeding? I am perfectly ready to concur with my noble and learned friend in any reasonable inquiry as to whether the law ought to be altered,—whether the rule of law, *Nemo tenetur seipsum prodere*, is or is not a correct principle; but I think it will be impossible to consent to a clause enabling us to

call upon a person to answer, as a witness, questions which, if a direct charge were made against him, he could not be called upon to answer. Suppose my pocket was picked in a crowd, and that I had a strong suspicion of a man near me;—if I charged that man with the offence, the law said, 'You have no right to interrogate him upon the subject.' Now, this bill did not propose that power should be given to interrogate a person so accused, but it said, 'If you can call such person as a witness in any other proceeding, then interrogate him as you please.' We should thus, in fact, get rid of that principle of law which prevented us from doing directly what this bill would enable us to do indirectly. In order to guard against this result, my noble and learned friend has introduced a proviso which would enact, that though the witness was to be bound to answer questions, his statements should never be given in evidence against him. That would, however, be a mere illusory protection. Take the case, I have put of my pocket being picked. Suppose I had seen the man near me in the crowd, and that was all I knew. Well, I might bring that man up as a witness on some occasion or other, and say to him, 'I suspect you picked my pocket of my watch. Did you do so?' The witness might now reply, 'I decline to answer the question;' but if this bill were passed he would be told, 'You are bound to answer, and you shall answer.' 'Well,' he might say, 'I confess I did.' 'What did you do with it?' 'I locked it up in my lodgings, and there it is now.' Now, although this statement could not be given in evidence against the witness, a policeman might be sent to his lodgings, and there the watch might be found. The man had been near me in the crowd; the watch would be found at his lodgings; and the person would thus have been compelled to convict himself. Although I feel, with my noble and learned friend, that this is a matter which ought to be looked into, and although I regret the discreditable scenes which are sometimes witnessed in Courts of Justice, I regard with very considerable apprehension any system which would create a sort of rival dexterity among different Judges as to examining a prisoner and entrapping him into some admission that would implicate him. This is a mode of proceeding which every one who has attended foreign Courts of Justice must frequently have observed, but I think it is a system more unpleasant to witness than the occasional escape from Justice of persons accused under our laws. To that part of the bill of my noble and learned friend, then, I cannot give my concurrence."

Upon the third of the leading propositions contained in Lord Brougham's Bill, the Chancellor was not equally decided. From what fell from his lordship, we collect that the Common Law Commissioners have prepared a report upon the subject, in which the question has been fully discussed.

and that there is an inclination to give the suitors in the Superior Courts the power of electing to have their cases tried by a Judge or a jury. The Lord Chancellor's observations on this part of the Bill are thus reported :—

"Another point referred to by my noble friend, was the expediency of allowing parties who have actions pending in the Courts of Common Law to have them tried by a Judge, and not by a jury. I stated on a former occasion, that I thought that was a question which deserved most serious attention, but I did not think it was very happily or appropriately introduced into this Bill, the more so as the subject had been one of those inquired into by the Common Law Commissioners, who are about to make a second report. The matter has, I believe, been most anxiously investigated by that Commission, which has prepared an elaborate report, stating the pros and cons, and I understand leaning to the views of my noble and learned friend. ('Hear, hear' from Lord Brougham.) It seems to me that that report will be the proper foundation for a discussion on the subject. I might put a great number of cases in which a Judge could decide questions quite as well, or perhaps better, than a jury; but, on the other hand, I do not know that there might not be very great difficulty if we begin to remodel the mode of trial of fact in those Courts. We must not regard this as a mere question as to how the particular issue might best be tried, but we must look upon it as a whole. The question is, supposing 1,000 or 2,000 cases to be tried in the course of a year, whether we should obtain better decisions generally by only putting juries to try a few selected cases, instead of familiarising them with the mode of dealing with such questions by letting them try the whole? I cannot but feel considerable apprehension that, if we merely had juries in a few difficult cases, we should not find that the minds of the jurymen were so well adapted for such investigations as they would be if they were continually employed during the whole of an assize, trying sometimes easy and sometimes difficult cases. With regard to great mercantile questions and contracts, the parties, I believe, like generally to have a jury, and the Judge would, in many such cases, be very much at sea without the assistance of a jury. (Lord Brougham.—'In London.') Yea, in London, Liverpool, Bristol, York, and other places, where questions of that kind arise, I think they could hardly be withdrawn from the consideration of juries. The real expense, I conceive, arises not with respect to trying the cases, but in the tax upon the juries who are summoned to spend a week or a fortnight in an assize town or elsewhere; and the expense would be the same whether they were sitting in the waiting-box or walking about the town, although it is true that arrangements might be made to save a portion of their time if my

noble and learned friend's proposal should be adopted. I do not mean to say that my noble friend may not make out a case establishing the proposition which he has been urging. I shall only say I think it is a question deserving most serious attention, and I shall look with the greatest anxiety to the facts and reasonings contained in the report on this very important subject."

In reference to the three changes of magnitude and importance proposed by Lord Brougham, therefore, the Lord Chancellor assents to the first, repealing the exceptive provision as to husbands and wives, continued by the first sect. of the Act 14 & 15 Vict. c. 95; he opposes the provisions which would compel a witness to answer questions tending to criminate himself; and he reserves his final judgment upon the proposition, to dispense with juries with the consent of the litigant parties.

Upon all these questions considerable difference of opinion exists, and is likely to prevail. It must be admitted, however, that Lord Cranworth has not shrunk from stating his views on all these difficult questions, frankly and explicitly, a circumstance which, it is hoped, may not be lost sight of by those who are so ready to assume the office of censors upon persons in authority.

## ATTORNEYS' CERTIFICATE DUTY.

ANSWER TO THE OBJECTION THAT THE CERTIFICATE TAX EXCLUDES DISREPUTABLE PRACTITIONERS.

It has been objected to the repeal of the peculiar taxes imposed on attorneys and solicitors, that they operate as a protection to the public by preventing the introduction or the continuance in the Profession of ill educated, needy, and disreputable persons.

The duty of 120*l.* on commencing a clerkship for five years, and a premium of 200*l.* or 300*l.* to the solicitor, together with the expenses attendant on a service of five years, it may be admitted, have a tendency to secure, in the first instance, some respectability of station, and in fact these expenses, with the admission stamp of 25*l.*, and the fees of examination and admission in all the Courts, really operate as a *property qualification* on entering the Profession.

It is not proposed to disturb these payments.

Again, the necessity of passing the examination (instituted in 1836) ensures a respectable amount of *general* as well as

legal education. Moreover, the examiners inquire into professional conduct and character, as well as legal ability.

*These are the safeguards to the public,* not one of which existed at the time the certificate tax was first imposed. What might be tolerated then as a war tax is now wholly without justification. If these do not operate, it is quite clear that the annual duty can have no such effect.

The sum required to be paid annually by persons whose practice is of small extent, exposes them to the temptation of increasing the amount of their charges, in order either to reimburse the outlay or enable them to make it. Thus the tax, in many cases, indirectly falls upon the suitor, operates as a tax upon the administration of justice, encourages irregular practice, and tends by the misconduct of individual members to degrade the Profession in public esteem and diminish the respect for the law.

The Incorporated Law Society as the Registrar of Attorneys and Solicitors, have received numerous complaints that attorneys practising in a limited and inferior class of business, receive emoluments from other attorneys, who are unable to take out their certificates, and who practise in the name of such certificated attorneys, and participate in the profits of the business, contrary to the express provisions of the Statutes, and to the injury of the public.

By these means they not only evade the payment of the duty but commit acts of mal-practice, and of oppression against the poor suitors of the Court, and generally escape punishment. For if complaint be made against the attorney in whose name the mal-practice takes place, he denies that he authorised the use of his name, and generally there is no sufficient evidence to contradict him.

If there were no certificate duty, but merely a small fee for annual registration, each attorney must keep his name on the register for the sake of publicity in the Law List; he would transact business in his own name and be amenable to the Court for any misconduct. It appears, therefore, that this tax induces an illegal mode of practice, by which the annual payment is avoided and the difficulty increased of detection and punishment for misconduct, and thus the public is injured in a far greater degree than the revenue can be benefited.

## REGISTRATION OF ASSURANCES' BILL.

### PETITION FROM NEWCASTLE-UPON-TYNE AND GATESHEAD.

THE following are the Statements in this Petition to the House of Lords from Barristers, Attorneys, and Solicitors.

**SHWETH**,—That your petitioners are informed that a Bill has been introduced into your Lordships' House, intituled "An Act for the Registration of Assurances in England," under which, if it pass into a law, all assurances affecting any lands in England must be registered by the deposit of the original documents, or duplicates or copies thereof, in one General Register Office in London or Westminster.

That in your petitioners' judgment, if such a register office be established, it will be soon found to be the monster grievance of the country.

That your petitioners presume to submit to your Lordships some of the grounds on which they have formed that judgment.

In every case of a conveyance, will, settlement, mortgage, charge, or other assurance, and even of a mere contract relating to lands or tenements, be the transaction ever so trifling in amount, the parties, in addition to the expense, trouble, and delay, incident to the registration thereof, must incur the expense of duplicates, or copies of their documents, and if the original documents be deposited in the Register Office, your petitioners will be unable to give them in evidence without incurring the expense of bringing them from London under legal process in the custody of the proper officer.

Those transactions, of daily occurrence in a great commercial country, in which temporary pecuniary accommodation is obtained on the instant, and without expense or exposure by means of a deposit of title deeds, will be most seriously interfered with and obstructed, and although by the proposed Act certificates of registration are to be granted, which certificates may be deposited by way of equitable mortgage without registering a memorandum of such deposit, yet another provision of the Bill, viz., that no subsequent assurance by a person having obtained a certificate of registration, shall be registered until such certificate be cancelled, will render it impracticable for any one to deal with his property if subject to an equitable mortgage, until such mortgage be discharged. The mortgagor will be unable to make a settlement of his estate, or even a contract for sale, although for the express purpose of paying off the charge out of the purchase money, unless such charge be previously satisfied. This result appears so paradoxical and so fraught with embarrassment and mischief to the whole community, that your petitioners cannot conceive it to have been contemplated by the framers of the Bill, but they submit to your Lordships that it will

inevitably follow from the measure if passed in its present form. For no person could be induced (or indeed advised) to deal with an owner or mortgagor of property without having his transaction registered, but by the proposed law this would be impossible, unless the existing certificates of registration were given up and cancelled.

That the delay and formalities which the Act would render necessary for effecting even the simplest transaction connected with real property, would in many cases (where the business, if done at all, depends for its efficacy upon despatch) altogether frustrate the intention of the parties, to the inconceivable loss and inconvenience of very many, and the utter ruin of not a few of her Majesty's subjects, who are quite satisfied with the facility of transfer and security of title under the existing state of the law.

Under the proposed new law the safety of every transaction will depend on the correctness of certain indexes, which from their voluminous character must be subject to inaccuracies.

That it will be a grievous hardship on her Majesty's subjects, living at a distance from the metropolis, to be obliged to travel to the Register Office themselves for the purpose of searching the register, or to intrust the search on which their title depends to strangers; and your petitioners humbly submit that, in consequence of the numerous sub-divisions of, and dealings with, property, in towns particularly, where ground is parcelled out in building sites and small plots for sale or for distribution by and amongst the members of freehold land societies, efficient searches could not be made, nor the identity of particular properties traced by persons not possessing local information without plans of a very costly nature, and that such searches and plans would give rise to delays and expenses which would be extremely onerous to the parties concerned in transactions of small amount. Indeed, the additional expense which the proposed system of registration must, in various ways, occasion, will be very severely felt in all transactions of small amount, and will utterly neutralise the benefit of the reduction of the stamp duty on conveyances, which was recently granted by the wisdom of the Legislature as a measure of relief to the landed interest, and which has, in the belief of your petitioners, enhanced the value of landed property, and will, moreover, tend to repress the acquisition of real property by the humbler classes, which the best interests of the country require to be fostered and encouraged.

Your petitioners humbly submit that the great desiderata in the laws affecting real property are simplicity, facility, and economy of transfer,—benefits which your petitioners gratefully acknowledge have been in a great degree attained by recent legislation; but, in the judgment of your petitioners, the proposed new law would be a retrograde movement, giving rise to complexity, delay, obstruction,

and expense, whilst, as to affording additional security of title, which is assumed to be the principal, if not the sole, object of the present Bill, your petitioners submit that the Act will not merely prove abortive, but will, by its complicated machinery and by controverting several old and well-known rules of equity, occasion many difficulties and causes of insecurity which do not now exist.

That it may be well doubted whether the evils which would be remedied by any system of registration, would not be more than counterbalanced by other evils which it would produce.

That the principle of a Central Registration is in every respect objectionable.

Your petitioners are aware that the Profession to which they have the honour to belong has been accused of opposing the present Bill and other similar measures from interested motives. Your petitioners do not presume to make any remark here upon such accusations. They, however, humbly submit to your Lordships that being themselves to a considerable extent interested in real property as owners and otherwise, they may without censure lay before your Lordships their objections to a measure which threatens most seriously to affect them in common with the other landowners of England, and the evils to be apprehended from which their professional avocations and experience peculiarly qualify them to foresee and point out; and that they may be allowed to do this with the more confidence seeing that the proposed measure would in no way diminish the emoluments of your petitioners, but, on the contrary, would increase them. It would in no way alter the form and mode of conveyance, but it would introduce an expensive and complicated machinery from which conveyancing is now free.

Your petitioners therefore humbly pray your Lordships that the "Bill for the Registration of Assurances in England" may not pass into a law.

## BANKRUPTCY BILL.

### ATTORNEY-ADVOCATES.

*To the Editor of the Legal Observer.*

SIR, — It seems to me desirable, upon many grounds, that he Profession should not misapprehend the scope and object of Lord St. Leonards' Bill. In introducing the Bill Lord St. Leonards stated, in reference to the employment of Attorney-Advocates, that he did not object to a man's solicitor arguing his case for him, but only to an attorney being turned into a barrister. "What I desire," said Lord St. Leonards (as you have reported his speech. See *Leg. Obs.*, p. 43), "is, to see the Profession stand upon its proper basis, I wish the barrister not to trench upon the province of the attorney, nor the attorney upon the province of the advocate." According to this announcement, nothing could be further from Lord St. Leonards' intention than, "as you



suggest in last week's *Leg. Obs.* (p. 404), "to compel parties to incur the expense of employing counsel when their solicitors are fully competent to advocate their clients' interest." As I read the Bill, it is not fairly open to such an objection. You appear to be under the impression that the 39th sect. of the new Bill operates as a repeal of the 12 & 13 Vict. c. 106, s. 247, and will prevent the employment of solicitors as agents, and deprive them of the privilege now enjoyed of "appearing and pleading without employing counsel." Now, in point of fact, the 39th sect. of the proposed Bill repeals nothing, but it puts a legislative construction upon the words "a solicitor of the Court of Bankruptcy," as contained in the 247th sect. of the Bankrupt Law Consolidation Act, 1849, and defines it to be "a solicitor of the Court of Bankruptcy acting generally in the case or matter, and not a solicitor retained as an advocate by such first-mentioned solicitor." The real solicitor of the suitor in Bankruptcy is therefore untouched by the proposed provision, nor is the agent of a country solicitor, I apprehend, affected in the slightest degree. The system which Lord St. Leonards proposes to strike at is that by which two or three practitioners, acting in the triplicate character of solicitors, agents, and advocates, have monopolised the now diminished business of the Court of Bankruptcy, to the manifest detriment of those who pursue the Profession according to its acknowledged rules, and confine themselves within its legitimate limits. Practically, the Court of Bankruptcy is not resorted to when it can be avoided, but those who have occasionally been compelled to accompany their clients there feel that matters are managed so much for the advantage of those who practise exclusively in Bankruptcy, and with so little regard to the convenience or advantage of the Profession generally, that the maintenance of the existing state of things is little to be desired. Such is the influence of Accountants and agents in that Court, that a solicitor who does not condescend to secure their good report, and propitiate their favours has little chance of keeping the client he takes into Bankruptcy. If the proposed clause in Lord St. Leonards Bill operates to put an end to—or even to discourage—this anomalous and discreditable state of things, it is eminently deserving of the support of the independent members of the Profession, who, I trust, will not be misled by supposing, that their interests are identified with those of a few individuals whose functions are not those of solicitors, but who, under colour of acting in that capacity, have materially interfered with the economy of the Profession, and inflicted incalculable injury upon those who confine themselves to their own walk in the Profession.

I am, Sir, your obedient servant,  
A PRACTITIONER OF THE COURT  
OF BANKRUPTCY.

We think our Correspondent, in regard to Attorney-Advocates, is mistaken in his main fact. We understand that the two or three solicitors to whom we presume he refers, invariably receive their instructions from and are retained by the creditor or bankrupt, or other party for whom they "appear and plead."—ED.

#### OPINIONS OF THE PRESS ON REPEALING THE CERTIFICATE DUTY.

In *Ireland*, as well as in *England*, with the exception of *The Times*, the Press has ably supported this branch of the Profession. Thus, *The Freeman's Journal* of the 12th instant contains the following *Leading Article*:—

"Ministers have had their first fall, notwithstanding the plausible resistance of the Chancellor of the Exchequer and the negative of Mr. Hume. The certificate duty has been condemned by a large majority—52—in a House of 386, and, for the first time since the question of repeal was seriously mooted, the Profession have been placed on firm ground, and the tax doomed to extinction.—Lord Robert Grosvenor brought forward the question in a sensible speech, and urged all the arguments against the injustice of the imposition, which, indeed, are so numerous and convincing as to admit of no direct refutation. Why an attorney should be subjected to an annual tax of 12*l.* for discharging the duties of a very responsible Profession, cannot be justified on any ground, except the plain one of state extortion. When Mr. Pitt, in his universal survey of the field left open by his predecessors to taxation—and which in the opening of his career covered a far more extensive surface than when he closed it—broached the attorney tax, it was said that he maliciously retorted on the whole Profession the injury or the insult of a single individual, and visited not only the existing but several successive generations with the sins of one real or supposed offender. When some patriot Whig of the day resisted the tax and complained of its rank injustice, Mr. Pitt admitted the injustice, but fell back on the financial necessity. Like the income tax, it was only to survive a certain period; but Mr. Pitt, like other statesmen, found a ready excuse to continue the tax, and, singular enough, in an assembly which owes so much to the talents and exertions of the Profession, no attempt was made to remove it until Lord Robert Grosvenor made the question as much his own as the extinction of the midnight gas-burners belong to Mr. Brotherton.

"A barrister is not annually taxed, and why should an attorney? The attorney requires a large capital to conduct his business, if he be in any considerable practice; while the barri-

ter needs no more than the furniture of a wig and bag, no matter what may lie under the one or stowed away in the other. Attorneys contribute largely to the public revenue in the shape of stamps and other duties, though the outlay must be made good by the client, which does not always happen, and in such not unfrequent cases the loss falls upon the attorney's capital. If, then, there were any class which more than another deserved the forbearance of the state in the shape of taxation, it is the Attorney Profession, but the state looks only to the ways and means, and takes little note of abstract right, provided the financial year shows a good balance. Mr. Gladstone, indeed, displayed much sympathy for the attorneys. He acknowledged their numbers and power, and on both grounds was every way disposed to hear their claims,—but then he could not go beyond a patient ear. He could only grant them the indulgence of an audience at Downing-street or a compliment in the House of Commons—but that was the limit of his generosity. Perhaps a time may come when he would be disposed to do justice, but the revenue being just now in rather a precarious condition, and so many interests press round the Chancellor for alleviation, that he would not listen to the attorneys' complaint, and so excited did he grow as to protest—ay, protest with all his power—against such injudicious motions as Lord Robert Grosvenor's! But all his affected indignation and earnest protesting were of no avail. The House, being in a somewhat genial mood, ridiculed the protestation; and however Mr. Gladstone is to fill up the gap in his Budget—whether by continuing the hop duties on the first rough draft of the Budget to abolition, or by other means of reparation, he must contrive as best he can, for the House struck off, without much discussion, the whole certificate duty.

“Mr. Gladstone thought to draw off the House from the real grievance by suggesting another, which he considered more urgent if he were in a position to redress it. There was a duty of 120*l.* ‘on the very threshold of the Profession which converted it into an absolute monopoly.’ Surely the existence of one wrong is no argument why another should not be abolished? It is not enough to visit the apprentice with a stamp duty of 120*l.*, but to fix him from his entry into the Profession with an annual duty of 12*l.* more. We should say the weight of the preliminary expense would be a powerful reason to diminish the burden of the other. It is a poor consolation to say that the apprentice has been grievously taxed on ‘the threshold,’ and then to insist that, having entered the shrine, he shall for ever after pay a tribute of 12*l.* for no conceivable motive, and on no possible ground except that he is an attorney, and, therefore, *primâ facie*, a fit object of plunder. A pretty argument in the mouth of a statesman, that a certain large sum required by the state creates a monopoly, just as if the monopoly were not aggravated by the annual exaction. How many

attorneys, after having devoted much time and labour to the Profession and expended hundreds of pounds in stamp duties, apprentice fees, and other expenses, have lost the fruits of all their labour by their inability to pay 12*l.* per annum? It is a small sum to a large practitioner, but in the present depressed circumstances of the Profession, by no means, inconsiderable to the great majority. But, small or large, it is a gross exaction—indefensible on every principle, and reconcilable only with a desire on the part of the State to impose special burthens on a particular class of the community.

“Lord Robert Grosvenor, however, must not remain content with his triumph, which is an advance but by no means the attainment of the end. He succeeded before, though by a narrower majority, in establishing the principle of repeal, and yet he had to re-enter on the struggle, because Ministers found means subsequently to defeat the sanction of the House on the second reading. Sir Charles Wood on one occasion vowed he never would consent to the vote of the House, and in the face of that declaration Lord Robert refused to push forward the Bill. Perhaps he was right, but on the present occasion there can be no hesitation as to his course. The majority in favour of the Bill is too weighty to be disregarded by any ministry, and the Chancellor of the Exchequer is too constitutional to attempt the reversal of that important decision. The amount also is a powerful reason for abiding by the result and interposing no further obstacle to an act of the most ordinary justice. If it were of the colossal proportions of the malt tax or income duties, or any of the other large contributions to the revenue, Mr. Gladstone might hesitate to adopt the decree, and dwell on the necessity of more caution, however just the end. But the certificate duty is too contemptible to be the subject of contention between the House and the Government; and now that a majority of 52 has sealed its fate, we hope Mr. Gladstone will not attempt to re-impose what he admitted to be an unjust tax, though for the present financially necessary. The abolitionists, however, should not rely on hopes, but be ready to give their continued support to the measure, and watch its progress with care. No opportunity for the Profession could be more favourable; and unless the Societies who are charged with the interests of the Profession in both countries be less anxious or less active than they have hitherto proved, they may expect to see a great injustice soon redressed. But a little perseverance will be required. The members who have supported the first reading must be encouraged to continued exertion, and when the next advance is to be made, in the event of Government not withdrawing all further opposition, the Parliamentary force should be collected, and augmented by new accessions.”

The *Morning Post* of the 24th March, has again ably supported the claim.

## REPORT OF THE COMMISSIONERS ON THE LAW OF DIVORCE.

By the report just published the Commissioners suggest—

That the distinction between divorce *à mensâ et thoro* and divorce *à vinculo matrimonii* shall still be maintained.

That the grounds for divorce *à mensâ et thoro* shall be conjugal infidelity and gross cruelty.

That wilful desertion shall either be also a ground for divorce *à mensâ et thoro*, or else shall entitle the abandoned wife to obtain from her husband a proper maintenance by way of alimony.

That divorces *à mensâ et thoro* may be obtained by the wife for the above-mentioned causes, as well as by the husband.

That divorces *à vinculo* shall be allowed for adultery, and for adultery only.

That divorces *à vinculo* shall only be granted on the suit of the husband, and not (as a general rule) on the suit of the wife.

That the wife, however, may also apply for divorce *à vinculo* in cases of aggravated enormity, such as incest or bigamy.

That recrimination, connivance, and condonation, shall, if proved, be deemed and treated as bars to the suit.

That recrimination shall include any of the grounds for which divorces may be obtained *à mensâ et thoro*.

That the existing mode of obtaining a divorce *à vinculo* shall no longer be continued.

That a verdict at law, and an ecclesiastical sentence, shall not be considered as preliminary conditions which must be complied with before it can be obtained.

That a new tribunal shall be constituted to try all questions of divorce.

That all matrimonial questions also which are now determined in the Ecclesiastical Courts shall be transferred to the same tribunal.

That this tribunal shall consist of a Vice-Chancellor, a Common Law Judge, and a Judge of the Ecclesiastical Courts.

That the party who seeks a divorce, whether it be a divorce *à mensâ et thoro*, or a divorce *à vinculo matrimonii*, shall pledge his belief to the truth of the case, and that there is no collusion between himself and his wife.

That the evidence shall be oral, and taken down in the presence of the parties.

That in general the process, practice, and pleading, shall conform to the process, practice, and pleading of the Court of Chancery, as recently improved; with such additions as may be beneficially derived from the ecclesiastical system.

That the rules of evidence shall be the same as those which prevail in the Temporal Courts of the kingdom.

That the Judges shall have the power of examining the parties, and also of ordering any witnesses to be produced, who in their opinion may throw light on the question.

That the Court shall be intrusted with a large discretion, in prescribing whether any and what provision shall be made to the wife, in adjusting the rights which she and her husband may respectively have in each others property, and in providing for the guardianship and maintenance of the children.

That there shall be only one appeal from the decree of the Court, and that the appeal shall be carried to the House of Lords.

## REMUNERATION OF SOLICITORS.

### LAW AMENDMENT SOCIETY'S REPORT.

IN proceeding to close our extracts from this memorable document, we may observe that a palpable fallacy prevails throughout the estimate of the professional services of a Solicitor. It is supposed that his office can be managed as easily and with as little expense as the chambers of a Barrister;—"that skilled labour" in the conduct of a suit is entirely performed by the solicitor himself;—that he needs no skilful clerks: that all the penmanship required can be done by the law stationer; and that if the solicitor be paid for the rough draft of the deed or brief, it is sufficient that the copies be charged for at the stationer's price.

Now, an attorney's practice, producing an income of only a few hundreds a year, cannot be conveniently conducted without two clerks at least—the attorney must at certain hours, and, indeed, as much as possible, be in his office to see his clients. He must, therefore, have an intelligent clerk, who knows the routine of business to be transacted in Court and at the Offices, and is intrusted with many matters of detail by which the time of his principal is saved. There must also be one or more careful copying clerks. The assistance of the law stationer is only called in, when the papers are required more speedily than the clerks of the office can supply them. The law stationer pays his extra writers not by salary but at a certain rate for the actual work. They are not responsible for the accuracy of the copies, and, indeed, a stationer's examination is never relied on. It is the duty of the attorney and his clerks to examine copies or engrossments, and the attorney is responsible for the consequences of any omission or inaccuracy.

Considering that the attorney must pay his clerks whether they are fully employed or not, and that he is answerable for all mistakes, and considering the great importance of having legal documents and papers completed with perfect accuracy, it is mani-

fest that 4*d.* per folio is a moderate charge for copying and examining papers. We deny that the copy or engrossment of a legal instrument is a mere mechanical affair; it requires an amount of skill and care to ascertain its accuracy which the stationer's writer does not possess, or does not bestow. Indeed, a specific fee is allowed on taxation to the solicitor for examining deeds not prepared by himself before they are executed by his client. It is idle to speak of the stationer's charge as the "market value" of the copying. The whole instrument, in its perfect state, must be taken into consideration. You must have men of learning and experience to prepare deeds and conduct actions and suits, and it is well for the public that they should be persons of integrity and able to answer for any omission or neglect of duty. To expedite business they must have a sufficient number of clerks. How can all these requisites be obtained without adequate remuneration?

The report to which we have referred thus proceeds:—

"To take another instance. Your Committee have had under their inspection a solicitor's bill for an attempted sale of some farms, but which proved abortive. The total amount of the law expenses (*exclusive* of those of the valuations and of the sale itself) is 75*l.* 18*s.* 2*d.* Among the items of this bill they find the following:—Instructions for abstract and looking out deeds, 1*l.* 1*s.*; drawing the same, 79 sheets, and fair copy, 39*l.* 10*s.*; instructions for conditions of sale, 13*s.* 4*d.*; drawing same and fair copy, 31 folios, 2*l.* 1*s.* 4*d.*; eight fair copies thereof, 6 brief sheets each, 8*l.* The 39*l.* 10*s.* so charged for the abstract, is at the rate of 10*s.* per sheet, being composed of 6*s.* 8*d.* per sheet for drawing, and 3*s.* 4*d.* per sheet for copying (the correct charge, Dax, 461); this makes, therefore, 13*l.* 3*s.* 4*d.* for copying the abstract alone, the law stationer's charge for which would be 3*l.* 19*s.* For drawing the conditions of sale, there is 1*l.* 11*s.* (Dax, 488); copy thereof, 10*s.* 4*d.* (law stationer's charge, 3*s.* 1*d.*); and the law stationer's charge for the eight fair copies of six sheets each, would be 2*l.* 8*s.* Hence it appears that among these items, amounting to 51*l.* 5*s.* 8*d.*, there is charged for professional skill, 29*l.* 12*s.*, and for copying, 21*l.* 13*s.* 8*d.*, for which, however, the law stationer, would charge 6*l.* 10*s.* 1*d.*; and the solicitor charges, herefore, for copying, 15*l.* 3*s.* 7*d.* more than its *market value*;—that is 29½ per cent. on those items, and 20 per cent. on the whole amount of the bill.

"As an example of the expenses of special pleadings, the costs of a special declaration of 20 folios would be as follows:—

	Law Statr.			£ s. d.		
Instructions for declaration . . . . .	0	6	8			
Drawing same, 20 folios . . . . .	1	0	0			
Copy to file, at 4 <i>d.</i> per folia . . . . .	0	6	8	0	2	0
Close copy . . . . .	0	6	8	0	2	0
Fee to pleader to settle . . . . .	1	1	0			
Attending him . . . . .	0	3	4			
	£3 4 4					

"Now when pleadings are what is called *settled* by a pleader, they are in fact entirely *drawn* by him; so that the charge for "drawing same" is made, but no service whatever rendered. The attorney's work really done is charged 10*s.* for; the copying would cost at the law stationer's 4*s.*, and the pleader's fee, 1*l.* 1*s.*; making 1*l.* 15*s.* The attorney, however, gets above this, 1*l.* 8*s.* 4*d.*; being an excess of 42 per cent.

"As a final example, your Committee give the costs of the drawing and taxation of the bill of costs of the solicitor for one of the defendants in the case of *S. v. A.*, in the Rolls Court. The amount of the bill was 424*l.* 16*s.* 11*d.*; it consists of 256 folios, and was taxed on the 11th February, 1853, by Mr. ———. There are three parties to the suit, and this portion of the costs is as follows:—

	£ s. d.		£ s. d.	
To drawing bill of costs and fair copy (8 <i>d.</i> per folio) . . . . .	8	10	0	
Copy for Messrs. L. (solicitors for plaintiff) . . . . .	4	5	0	
Copy for Messrs. V. & Y. (solicitors for other defendant) . . . . .	4	5	0	
Total costs of sending in the bill . . . . .	17	0	0	
Attending taxation (one at-£ s. d. tendance for every 25 folios) . . . . .	3	6	8	
Ditto for the two other solicitors . . . . .	6	13	4	
Attending to settle queries, three solicitors . . . . .	1	0	0	
Warrants, certificate of costs, and Accountant-General . . . . .	3	19	2	
Per-centage on Fee Fund, 2½ per cent . . . . .	8	15	0	
Total costs of taxation . . . . .	23	14	2	

Total 40 14 2

"On these charges the only remark to be made is, that the taxation itself really occupied five hours; but as one hour is allowed at the office for every 25 folios in the bill, the whole 11 hours are charged for by each of the three solicitors at 6*s.* 8*d.* an hour. (See the Chancery Commissioners' Report, App. A., p. 110.)

"The cost of *copying* the bill of costs is 12*l.* 15*s.*

"These instances will suffice to show how large a proportion of a bill of costs the charges

for copying and engrossing usually constitute. They do not, however, explain the whole of the influence the exorbitant profit allowed upon them has upon the purse of the client. That influence must now be traced a step further. In what has been said it has been assumed that the documents which have been spoken of were of a fixed length, and incapable of extension or curtailment; but that is by no means the case. The verbosity and prolixity of conveyancers has been so long notorious that words would be wasted in any attempt to bring the charge home to them; and it is apprehended that special pleaders and equity draftsmen will be admitted to have been hitherto open to a similar imputation. There is, however, the best authority for stating that prolixity and the introduction (frequently to a scandalous extent) of unnecessary and irrelevant matter into pleadings, conveyances, and other legal documents, constitute a most serious evil, for which at present there is no adequate remedy. Your Committee think that under the present system no other result can reasonably be expected; since for every additional 75 words the solicitor can get into a deed he will be paid—for drawing it, 1s., for fair copy, 4d., for engrossing, 8d.; and a similar profit, more or less, is to be made on every pleading at Law and in Equity; that conveyancers, pleaders, and equity draftsmen are also in great measure paid according to length; and last, though not least, that his want of legal knowledge must, in almost every case, place the client, so far as the length or necessity of the documents for which he has to pay are concerned, entirely in the hands of his professional adviser."

With regard to law stationers' charges, so often repeated in the report, the solicitors who employ them are responsible, as already observed, for the accuracy of the transcripts, and the law stationer's examination is never relied on. The writers they employ make the most strange and ignorant blunders. Besides, the solicitors are not obliged to employ law stationers: they may have careful clerks in their own establishments, and, including a competent examination of copies and engrossments, with the responsibility incurred, the usual charge is perfectly reasonable.

## MANCHESTER LAW ASSOCIATION.

### ANNUAL MEETING.

[Concluded from p. 379.]

Mr. George Thorley, in continuation, said—There was scarcely anything of value in the recent Equity changes but what had been previously suggested by solicitors. Indeed, the course adopted by their own and all kindred associations had illustrated another of their leading principles, that none are more desirous or more really interested in promoting

wise and well-considered legal reforms than the Profession itself,—objects, however, which, as individuals, they were powerless to obtain, and which could only be successfully urged as they had been by the combined efforts which their Association afforded. But the efficiency of the Association had not only been manifested in the objects to which he had alluded—it had been shown in its exertions to correct the extortions and abuses of the lower grades as well as in maintaining its position and in protecting its just rights and privileges from encroachment by the higher branches of the Profession. They would remember, that on the discussion of the County Courts' Bill, the Attorney-General and members of the Bar in the House of Commons endeavoured to give to the Bar the right of pre-audience over the attorneys, which was a direct interference with the privileges of the latter, as well as with the rights of the Public. It was an innovation highly important to that portion of their branch of the Profession who practise advocacy in those Courts, and their own and other Law Associations felt bound to take the most efficient means to resist it, as well to obviate the more immediate consequences of such an infringement, as also to prevent the equally important object, that of preventing its being used as a precedent in the pending and prospective legal reforms; and although the Law Associations were so far successful in their objects, it would be remembered that in a recent Act a declaratory clause had been inserted with regard to a subject which had been much discussed, viz., the right of the Bar to receive instructions from litigants themselves, and without the intervention of attorneys; in effect, to break down that line of demarcation which he thought was not less useful in being maintained to preserve the real interests of the Bar than their own and those of the Public. He believed, however, that up to the present time the members of the Bar had not availed themselves of this practice; he believed that generally the Bar did not participate in the views of a learned individual of their own body, in whom the town of Birmingham rejoiced, and who had recently immortalised himself by the publication of a pamphlet containing his views of the relative positions of the Bar and the attorneys, one of which for their edification, he would give to them in his own words:—"Why," (said the learned gentleman, addressing his own branch of the Profession),—"why should you employ a middle-man to do that which is best done by yourself? If the attorney were only the barrister's clerk, which, under a good system, he should be, there would be no harm in his introducing the case to his master." He (Mr. Thorley), however, trusted that, notwithstanding this gentleman's sage conclusions and advice, that for the maintenance of the honour and prestige of the Bar, the right to which he had alluded would never be exercised by any of its members; and he concurred in the views of the writer of an article in

the last number of a Quarterly Review, on the Life and Letters of the late Mr. Justice Story, the eminent American jurist, who, after stating that he entered the office of Mr. Samuel Sewell, of the Essex Bar, observes:—

"It is called an *office*: for the barristers of the United States, except in the Supreme Court of Washington, may be, and commonly are, admitted and act as attorneys also—a union of characters happily, as we think, unknown as yet in England, which, though it may frequently give to the barrister a more practical and intimate knowledge of the details of procedure, tends to lower the tone, and with conscientious minds even to fetter the freedom in the discharge of their duties. It is not good for the advocate to be immediately in contact with the hopes and fears, the strong unreasonable likeings and hates of his clients, still less to have to search for witnesses, to guard them against tampering, and to go through all that preliminary contention in a cause which must bring the mind heated and embittered to what ought to be the open, measured, free, and yet courteous contention of the trial."

In making those observations, he (Mr. T.) wished to guard himself from any feeling of hostility towards the Bar, for whom, as a body, he had always entertained the highest esteem and regard, both for their learning, integrity, and that fearless spirit of independence, to which we may mainly attribute, in a constitutional point of view, the protection of our rights and our liberties, and the maintenance of the pure administration of the laws, as well by their learning and research, as by the salutary influence they produce, even in the highest tribunals; and he believed them to be highly useful, both to the Public and their own branch of the Profession. His only hope was, that nothing should occur with regard to such a body, and least of all emanating from itself, that should injure its prestige or impair its usefulness, or which should bring the two branches of the Profession into hostility and unfriendly feeling. And although it was perhaps to be expected, that in the extensive changes which had taken place in various departments of the Law, and the confusion and jostling of the Profession, out of their usual and accustomed positions, some encroachment might naturally be expected, yet he had great confidence that in the exercise of a sound discretion and right feeling by both branches, and, he would add, a sense of the mode in which the administration of Justice and the public good would be best served, that a short time only would be required to dispel any difficulties, and that the Profession would settle down into that useful division of labour and pursuits, within the principles of their ancient and accustomed limits, which he believed would be found to be in the result most conducive to the best interests of both branches of the Profession, as well as of the community. On the other hand, he by no means wished to be understood that they should relax in their exertions to connect themselves still more

closely, and to render their Association more powerful in organisation and efficiency "to stand by their order," and to protect their own just rights and privileges. For, like the late Government, and very unlike their friends of the Peace Society, he believed that so long as human nature should retain its present attributes, that until the lion should lie down with the lamb,—until, indeed, the millennium itself should come, and there should be no longer need of law or lawyers, the best means of preventing attacks and invasion of every kind would be by maintaining in a state of efficiency their defences. And when he then looked around in that the fortress and citadel of their Association and beheld the large array of mental and physical force which could at any moment be summoned into action, although they would, for the promotion of evil, of selfish, or unworthy objects, be powerless, yet he felt confident that, in maintaining their own just rights, in the correcting of abuses, and in obtaining wise and well-considered legal changes, their efforts would be found to possess the confidence and support of the Public, and in the results irresistible.

Mr. *Stephen Heelis* proposed the healths of the Lord Chancellor and the Judges. Mr. Heelis observed that this toast included all the Judges of the Superior Courts, both of Law and Equity in London, who, he had no hesitation in saying, were a body of men unequalled in the world. He did not mean to say (for it would be affectation if he did), that there were not to be found in other professions, and in high places in other professions, men of great ability, but, without fear of contradiction, he asserted that there was no profession which had at its head the same galaxy of talent which was displayed by the Judges of the Superior Courts in this country. And while he said that, and while he would more particularly refer to that great law functionary who was the first in their Profession—the Lord Chancellor—he might be permitted to express a regret (which he believed was common amongst the Profession and the community at large) that circumstances had prevented a nobleman recently elevated to that distinguished position from retaining it, in consequence of a change in her Majesty's Government. Lord St. Leonards had long been looked to by the community at large as a man decidedly fitted to occupy the post which eventually he was called upon to fill—and having been called at a short notice into that position, at a time when great changes were looked for, and great changes going on, he thought it might be averred that he was found quite equal to the task which the times and the public service had imposed upon him; and he went to the performance of his duties not merely in order to carry on the law as it then stood, but also to initiate and carry out those improvements in practice, which they had seen done within the last twelvemonths in a manner which challenged the admiration and approval even of his bitterest political foes. He (Mr. Heelis) was satisfied that in all quar-

ters, whether they were of the same way of thinking as himself or not, in reference to politics, there could only be one opinion as to the fitness of Lord St. Leonards for the high office which he sustained. He said this, of course, without disparagement of the talents of his successor. Most of the gentlemen whom he addressed had, doubtless, had the opportunity of observing the great intelligence, the patience, the courtesy, and attention which was paid by Lord Cranworth to all the business that came before him, and he (Mr. Heelis) was satisfied that no one ever had a cause tried before him, either of Common Law or in the Court of Chancery, who did not feel that he had received at his hands as much attention as it was possible for a man to give. There was no doubt that from Lord Cranworth's antecedents we might expect that he would carry forward that system of reform in his Court, of which much had been done by Lord St. Leonards, but which still admitted of considerable improvement. He had great difficulties to contend with—the timidity in many quarters—the strong desire to retain that which existed in others—and he had to curb in some degree the crude and undigested notions and fancies which so many were found putting forward, without knowing whether they would work. There was no question, that if many of these schemes which were from time to time brought before the public, were tested and brought into play, they would find the legal machine at a dead lock, which could not get on at all. Therefore, it was not the man who wished to do the most who was the best reformer,—it was the man who wished to do a good deal, but at the same time who did it in such a manner as should redound to his own credit and benefit the community at large. He would not say more than that the Judges were a body of men deserving their highest esteem and respect, and he believed they had it.

Mr. N. Earle proposed "The Metropolitan and Provincial Law Association," and Mr. Taylor responded on behalf of the Association.

Mr. F. Robinson then proposed "The Liverpool and other Provincial Law Associations," and in doing so, suggested the propriety of forming Law Associations in towns, however small, which returned members to Parliament. It must be evident that wherever they had Associations formed in towns which returned members to Parliament, they would have a direct means of communication, and an influence with the members of that particular borough, and by their instrumentality would be able to operate upon the Legislature. He did not suggest this for the maintenance of anything like the privileges of the Profession, if those were inconsistent with public advantage, for he held that whenever the public advantage required it (no matter what might be their privileges) those privileges must give way. He wished these Associations to be formed for the purpose of bringing before members of Parliament the views which the Profession entertained of many matters, upon

which, from their practical knowledge, they could give better reasons, and introduce them with more benefit to the public than could be done by those who had not had the advantage which the practice of the law generally gave. Unless they brought practical views to bear upon members of Parliament, and so induce them to pass laws which could be practically useful—which would work in every-day life, and answer the purposes of every-day transactions, they might look in vain for that boasted effort of legislation which they had been promised by theoretical reformers and impracticable statesmen.

Mr. T. L. Rushton, of Bolton, proposed the health of "The Committee," which was acknowledged by Mr. R. B. Cobbett. After urging upon the members of the Association to take an active part in aiding the committee to carry out the objects which they had in view, Mr. Cobbett alluded to some of the matters to which the Committee for the ensuing year would have to attend. Although a good deal had been done in the shape of Law Reform, it was perfectly clear that much remained yet to be done, because that which the public were determined to have was the means of having their disputes in all branches of the law settled as expeditiously and cheaply as possible. He knew that it was the feeling of the Committee and of the Society to aid as far as they possibly could in that object, because, although none of them, he hoped, approved of any man performing labour without being paid to the full extent of that labour, yet none of them had any sympathy with those incumbrances with which all their proceedings were choked, and which caused great expense to them and unnecessary expense to the country. The subject of *bankruptcy* and *insolvency*, to which the president alluded, was one in which some change must be made. There never was anything so absurd and so contradictory as the state of the law on that subject. It was the feeling of every man interested in such a subject that he would almost do anything—rather lose his debt, or take a small portion of it—than make a man a bankrupt, and that not because there was any difficulty in getting hold of a man's affairs, but because there was a machinery set to work by the law for the purpose of doing that, to which machinery they were tied and could not escape from, which was so dilatory, so inefficient, and so expensive, that it was worse than losing all the money involved. Then, again, the practice of *insolvency* was in a state totally absurd. There were some three insolvent courts in this country, all of them acting under different laws and on different principles,—one court suiting one insolvent's peculiar condition, another court suiting another insolvent's peculiar condition, without any reference in the world to justice, as between a debtor and his creditors. This was a subject which would be brought forward either this or next year. Then there was the question of *equity*, which was far from being settled yet, for notwith-

standing the great changes which had been made, there was at this time no Court in the kingdom before which a suit in equity, involving but a small amount, could be practically tried. If they looked to the fact, that in the greater proportion of all the cases in which wills were proved and letters of administration were granted, the whole sum that the testator died worth, would be under 500*l.*,—when they considered that in these cases innumerable doubts arose—cases which could only be decided in a Court of Equity—they would see that to exclude from the Courts of Equity cases of smaller amount, was to give up all that a person might be entitled to, or all the money that had to be recovered. There was an attempt at alteration on the subject made in the County Courts Act, in which it was enacted that in cases of legacies and of the proportionate parts of the money to which personal representatives were entitled, actions might be brought in the County Court; but it so happened that the Act gave jurisdiction without giving the means of carrying into effect that which the Act intended; so that if the administrators or executors went before a Court with a pile of accounts, and said "We do not owe the money, and if you investigate these accounts you will come to the same conclusion," the Judge could not do it, and the result was that the case got out of the Court again. Even in common law reforms there was no doubt that the immense disproportion in the expense between trying cases at the assizes for 60*l.*, and trying cases at the County Court for 50*l.*, was so anomalous, that some alteration ought to be made in it. The ordinary rule undoubtedly would be that to try a case in which 50*l.* were at stake in the County Court, some 10*l.* or 15*l.*, more or less, would be the outside that a man would be told he would have to risk. Go 10*l.* higher—let the plaintiff determine upon having the full amount of that which he claimed—he would have to go to the assizes, 30 miles off, to get the case tried, and if they dealt fairly with the client, they must tell him he must be prepared, in the event of losing the cause, to pay 200*l.* Now there could be no reason for such a state of things as that; and it was not to be supposed that some alterations would not be made in it, and if those alterations were to be made, the labour of seeing that they did not make matters worse would devolve upon the members of the legal Profession, and, in some degree, upon the Committee of this Society.

Mr. S. Fletcher proposed "The treasurer of the past year (Mr. R. M. Whitlow)," to which Mr. Radford responded on behalf of Mr. Whitlow.

The Chairman proposed the health of the honorary Secretary of the past year, Mr. J. Street, who has also been appointed treasurer in the place of Mr. Whitlow, who has resigned from ill health.

Mr. Street, in acknowledging the compliment, said, he felt that in resigning the office of secretary he was resigning it into the hands

of one who could perform its duties most efficiently. The other toasts were "The President," proposed by the Mayor of Manchester; "The Honorary Secretary" (Mr. C. Gibson), proposed by Mr. T. P. Bunting; "The Vice-President," proposed by the Mayor of Salford.

## SETTING DOWN CLAIM APPEALS.

ALL appeal motions from orders made on the hearing of claims are to be set down with the appeals and not with the appeal motions; and the solicitors are requested, at the time of setting down such appeal motions on claims, to produce at the order of course seat the notice of motion, which must state that it is an appeal from an order of the Master of the Rolls, or one of the Vice-Chancellors, made on a claim.

## PROFESSIONAL LIST.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From February 22nd, to March 18th, 1853, both inclusive, with dates when gazetted.*

Allen, Joshua Jullian, and Palgrave Simpson, 20, Bedford Row, (under the firm of Norris, Allen, and Simpson). March 8.

Brodrick, William, and William Bell, Bow Churchyard, City, Attorneys and Solicitors, (under the style or firm of Bell, Brodrick, and Bell). March 8.

Coates, Peter Eaton, and Wallington Coates, Stanton Court, Somerset, Attorneys and Solicitors. Feb. 22.

Crosby, James, and Ralph Compton, 3, Christ Church, Old Jewry, Attorneys and Solicitors. March 18.

Newbon, Henry, and Charles Philip Utton, Noble Street, City, and Gravesend, Attorneys, Solicitors, and Conveyancers. Feb. 25.

Yonge, John, and Frank Selby Gill, 156, Strand, Attorneys and Solicitors. March 18.

## NOTES OF THE WEEK.

### REPEAL OF CERTIFICATE DUTY.

OUR readers are aware that the Houses of Parliament have adjourned to Monday, April 4th, when the Chancellor of the Exchequer has promised to fix an early day for the purpose of making his financial statement. Lord Robert Grosvenor has secured the first place among the orders of the day on the 27th April, for the 2nd reading of the Bill to repeal the Certificate Duty. We presume that the Budget will be opened before that day, and in the meantime, we understand that every effort will be made to ascertain the intention of the Government on the subject.

The solicitors throughout the country who have not already sent petitions should lose no time in forwarding them to the Incorporated Law Society, in order that they may be presented either on the day of the second reading



or previously, as may be deemed expedient. Since the list published last week, a very large number of petitions have arrived.

#### LAW APPOINTMENT.

The Queen has been pleased to appoint *Colin Blackburn, Esq.*, Barrister-at-Law, to be

one of her Majesty's Commissioners for inquiring into local charges upon shipping.—From the *London Gazette* of the 22nd March.

#### NEW MEMBER OF PARLIAMENT.

*Lawrence Heyworth, Esq.*, for Derby, instead of *Thomas Berry Horsfall, Esq.*

### RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

#### Lord Chancellor.

*In re Adam's Patent.* March 21, 1853.

PATENT.—AMENDMENT OF ERROR IN DATE.—MISPRISION OF CLERK.

Held, that the Court had jurisdiction to amend the enrolment of a patent where it appeared the patent was dated on May 24 and the writ on the 22nd,—the patentee being too late in his application for enrolment in consequence of his being unaware of the difference of the dates.

THIS was an application to give effect to an order of the Master of the Rolls amending an enrolment of this patent. It appeared that the writ of the Privy Seal was dated May 22, but that the patent itself was dated on the 24th, and the patentee being unaware of the difference in the dates, had taken the patent a day after the six months limited for the purpose and too late to be enrolled. The Master of the Rolls had directed the amendment, and this application was made upon the objection of the officer at the patent office.

*Hindmarch*, in support, cited *Ludford v. Grettton*, Plowden, 492; Vin. Abr. "Prerog. of the King," G. b. 3.

The Lord Chancellor said, that the mistake had occurred through the misprision of the clerk, and that the Court had jurisdiction to correct the error.

March 16.—*In re Bulmer, ex parte Johnson*—Cur. ad. vult.

—16.—*In re Collinson*—Petition refused.

—19, 21.—*Horsfield v. Ashton*—Appeal from Vice-Chancellor Turner dismissed, with costs.

—21.—*In re Simpson and Isaac's Patent*—Stand over.

—21.—*Clifford v. Turrell*—Rehearing refused.

—21, 22.—*Trail v. Bull*—Part heard.

—22.—*Shrewsbury v. Shrewsbury*—Order by consent.

#### Lords Justices.

*Burgess v. Burgess.* March 18, 1853.

INJUNCTION.—USE OF NAME, WHERE SAME AS INVENTOR.—RESTRAINING SALE OF MANUFACTURE.

An injunction was refused on motion by way of appeal from Vice-Chancellor Kindersley, with costs, to restrain the defendant, who was the plaintiff's son, from advertising or selling a manufacture by

the name of "*Burgess's Essence of Anchovies*," and held that the fact of the plaintiff being the first inventor, and its having attained great celebrity did not per se entitle him to the exclusive manufacture.

THIS was a motion by way of appeal from the decision of Vice-Chancellor Kindersley refusing, in October last, an injunction to restrain the defendant, who was the plaintiff's son, from selling and advertising a manufacture by the name or description of "*Burgess's Essence of Anchovies*," of which the plaintiff was the first inventor and manufacturer. It appeared the defendant had been formerly employed by the plaintiff, but had since separated.

Sir F. Thesiger, Campbell, and R. Moore, in support, cited *Sykes v. Sykes*, 3 B. & C. 541; *Croft v. Day*, 7 Beav. 84.

*Bacon and May*, contra, were not called on. The Lords Justices said, the only ground on which the injunction was sought was the great celebrity the plaintiff's manufacture had acquired during many years in the market under the description in question, but that, however, could not be held to give the plaintiff such an exclusive right as to prevent another man from making the essence and selling it in his own name. The appeal would therefore be dismissed, with costs.

March 16.—*Great Western Railway Company v. Oxford, Worcester, and Wolverhampton Railway Company*—Motions for appeal and re-hearing refused, with costs, and motion for injunction stand over.

—16.—*Barratt v. McDermott*—Part heard.

—19, 21.—*Official Manager of the Grand Trunk or Stafford and Peterborough Union Railway Company v. Brodie and others*—Appeal allowed from Vice-Chancellor Wood.

—21, 22.—*Ex parte Levy, in re Ford*—Petition dismissed, with costs.

—22.—*Ex parte Boyle, in re Boyle*—Appeal allowed from Mr. Commissioner Balguy.

#### Master of the Rolls.

*Cross v. Thomas.* March 18, 1853.

BANKRUPT DEFENDANT.—PLAINTIFF ENTERING APPEARANCE FOR ASSIGNEES ON THEIR NON-APPEARING.

Order under the 15 & 16 Vict. c. 86, s. 52, for leave to the plaintiffs to enter an appearance for the assignees of a bankrupt defendant, against whom an order had been

obtained on the bankruptcy, but who had not appeared.

THIS was a motion under the 15 & 16 Vict. c. 86, s. 52, for leave to the plaintiffs to enter an appearance for the assignees of a bankrupt-defendant, who had been duly made parties on his bankruptcy, but had not appeared within the time limited for the purpose.

Beavan in support, on an affidavit of service, and of their not having appeared.

The Master of the Rolls granted the application.

Hewison v. Negus. Feb. 21; March 19, 1853

POST NUPtIAL SETTLEMENT.—WHEN VALID AS AGAINST SUBSEQUENT MORTGAGE FOR VALUE.

By a post nuptial settlement duly acknowledged, under the 3 & 4 Wm. 4, c. 74, certain property was vested in trustees upon certain trusts, for the benefit of the defendant, and his wife and their children. The same property was subsequently mortgaged by the defendant and his wife, and also acknowledged for valuable consideration: Held, that as the settlement was duly executed by the wife for a valuable consideration, it was good as against the mortgagees, and a bill to foreclose was therefore dismissed, but without costs.

By a post nuptial settlement, in 1848, certain property at March, near Wisbeach, was vested in trustees upon certain trusts, for the benefit of the defendant, William Negus and his wife, and their children, the deed being duly acknowledged by the wife, under the Fines and Recoveries' Abolition Act, 3 & 4 Wm. 4, c. 74. It appeared that in April, 1851, the defendant and his wife mortgaged the same premises to the plaintiffs for a valuable consideration, but with notice of the settlement, and which was also acknowledged. The plaintiff now instituted this suit for a foreclosure.

Lloyd and Bilton in support, on the ground the settlement was voluntary, and invalid as against a purchaser for value, citing *Butterfield v. Heath*, 22 Law Journ., N. S., Ch. 270.

R. Palmer and Osborne for the defendants, contra.

Cur. ad. vult.

The Master of the Rolls said, that that it was clear a voluntary settlement fell within the 27 Eliz. c. 4, and was void as against a subsequent purchaser, even with notice of the settlement, and the only question was, therefore, whether the consideration here was sufficient to support the settlement, as a wife or a husband might contract with the other for a valuable consideration, so as to render it valid and subsisting. In the present case, there was no doubt the settlement was executed by the wife for a valuable consideration, and was therefore good as against the mortgagee, and the bill must be dismissed, but without costs.

March 16.—*M'Leod v. Annesley*—Trustee

held liable to make good sum lost by negligence.

Mar. 16.—*In re Ford's Trust*—Petition for payment of legacy stand over until committee appointed of lunatic widow.

—18.—*Page v. Page*—Order discharged for leave to married woman to file bill in form of *pauperis*.

—16, 17, 21, 22.—*Puleford v. Richards and others*—Part heard.

Vice-Chancellor Kindersley.

*Pearce v. Miller*. Feb. 14, 1853.

SERVICE OF COPY BILL ON DEFENDANTS ABROAD.

Leave granted to serve copy bill, under the 15 & 16 Vict. c. 86, s. 3, in administration suit, on two of the defendants, who were the children of the testator and were in Australia, in pursuance of the 33rd Order of May, 1845, and the registrar was directed to fix the time for the return.

THIS was an application for leave to serve the copy bill in this administration suit, on two of the testator's children, who were entitled with two others in remainder after the death of his wife, and were in Australia. The will contained no power to sell the real estate.

Karslake in support, referred to 15 & 16 Vict. c. 86, s. 3, and the 33rd Order of May 8, 1845.

The Vice-Chancellor granted leave and said, the registrar would fix the period for the return.

Vice-Chancellor Stuart.

*Vincent v. Pain*. March 21, 1853.

DEVISEES IN TRUST FOR SALE OF REAL ESTATE.—ENTERING INTO POSSESSION.—ELECTION TO CONTINUE PROPERTY AS REAL ESTATE.

Devisees in trust for sale of land after the death of the testator's wife and sister, and to pay thereout certain legacies, entered into possession on their deaths and paid the legacies, but they did not sell: Held, that they had not thereby elected to continue the property as real estate, and a sale was therefore directed on the death of one of them.

THE testator, Mr. Newcombe, by his will directed his trustees to sell his real estates after the death of his wife and sister, and to pay thereout certain legacies, and then to hold the proceeds in trust for the Rev. Wm. St. A. Vincent and the plaintiff George G. Vincent. It appeared that upon the death of the tenants for life, the plaintiff and his brother entered into possession and paid the legacies. Upon the death of the plaintiff's brother, a question arose whether they had elected to retain the estates as real property instead of taking the proceeds as personality.

*Wigram, Malins, Dickinson, W. Hislop Clarke, and Briggs*, for the several parties *Harcourt v. Seymour*, 2 Sim. N. S. 12, was cited

The *Vice-Chancellor* said, that there had been no election to continue the property as land, and a sale was accordingly directed.

March 16.—*Goodwin v. Fielding*—Decree for specific performance.

— 17.—*Horwood v. Griffiths*—Part heard.

— 18.—*In re Dover, Hastings, and Brighton Junction Railway Company*—Stand over for application to be made to Lords Justices to hear this appeal from the Master.

— 18.—*Layton v. Layton*—Decree for settlement of property of minor.

— 19.—*In re Ryde and Ventnor Railway Company*—Order for payment out of Court of fund.

— 19.—*Attorney-General v. Croft*—Order for payment of the costs of churchwardens.

— 19.—*Butterworth v. Bates*—Stand over to first day of Easter Term.

— 17, 21.—*Brown v. Vernon*—Adjourned for hearing at Chambers.

### **Vice-Chancellor Wood.**

*Choyce v. Ottey.* March 17, 1853.

**SETTLEMENT. — GENERAL ASSIGNMENT, WHEN NOT LIMITED BY SPECIFIC MENTION OF SETTLED PROPERTY.**

*A settlor assigned all the property, both real and personal, of which he was then or might thereafter become possessed in trust for his intended wife. Held, that the clause included a sum of money to which the settlor became entitled on his father's death, although the settlement went on to describe of what the property consisted, and did not mention the reversion in question.*

**THOMAS OTTEY**, by a settlement dated in 1841, assigned all the property, both real and personal, of which he was then or might thereafter become possessed in trust for his intended wife. The property was further described as consisting of two notes of hand for 120*l.* and 40*l.*, and certain cottages. This special case was presented for the opinion of the Court, whether a sum of 700*l.*, to which the settlor was entitled in reversion under his father's settlement was included in this settlement by the general clause, notwithstanding the subsequent enumeration of the property.

*Daniel*, for the personal representative, contended it was not included; *A. Smith*, for the trustees of the settlement, contra; *Wickens* for the trustees of the fund.

The *Vice-Chancellor* said, that the general words were sufficient to include the fund in question, although not enumerated, and ordered its transfer to the trustees of the settlement.

March 16.—*Atchison v. Le Mass*—Issues at law directed.

— 16.—*Bythessea v. Bythessea*—Judgment on special case as to construction of will.

— 18.—*East and West India Docks and*

*Birmingham Junction Railway Company v. Dawes*—Injunction granted.

Mar. 19.—*Newton v. Chorlton*—*Cur. ad. vult.*

— 21.—*Johnson v. Shrewsbury and Birmingham Railway Co.*—Injunction refused.

— 22.—*Earl of Lindsey v. Great Northern Railway Company*—Arrangement come to.

— 22.—*Higgins v. Lane*—Account directed.

— 22.—*Peak v. Peak*—Judgment herein.

— 22.—*Holloway v. Collier*—Judgment on construction of will.

### **Court of Queen's Bench.**

*Coe v. Lawrence.* Jan. 25, 1853.

**ACTION AGAINST CLERK TO BOROUGH JUSTICES UNDER MUNICIPAL CORPORATION ACT, s. 102.—DEMURRER.**

*A demurrer was allowed to the declaration in an action brought against the clerk to the justices of a borough, to recover penalties under the 5 & 6 W. 4, c. 76, s. 102, for acting as an attorney in the borough sessions.*

THIS was a demurrer to the declaration in this action, which was brought against the clerk to the justices of the borough of Ipswich, to recover penalties under the 5 and 6 W. 4, c. 76, s. 102,<sup>1</sup> for acting as an attorney in the borough sessions. He also pleaded the general issue.

*Cowling* and *D. Power*, in support of the demurrer, which was opposed by *Hayes* and *Honyman*.

The Court said, that the section did not apply to the defendant, and that he was therefore entitled to judgment.

### **Court of Exchequer Chamber.**

*Oldfield v. Dodd and another.* Feb. 7, 1853.

**ACT OF BANKRUPTCY.—WHERE DEBTOR ON BEING SUMMONED ADMITS PART ONLY OF DEBT.—BOND.**

*A trader was summoned under the 12 & 13 Vict. c. 106, ss. 78, 79, to admit a debt due to the defendant, when he deposed to*

<sup>1</sup> Which enacts that "it shall not be lawful for the said clerk to the justices, by himself or his partner, to be directly or indirectly interested or employed in the prosecution of any offender committed for trial by the justices of whom he shall be such clerk as aforesaid, or any of them, at any court of gaol delivery or general or quarter sessions; and any person being an alderman or councillor, or clerk of the peace of any borough, or the partner or clerk, or in the employ of such clerk of the peace, who shall act as clerk to the justices of such borough, or shall otherwise offend in the premises, shall for every such offence forfeit and pay the sum of 100*l.*, one moiety thereof to the treasurer of such borough to be paid over to the credit and account of the borough fund of such borough and the other moiety thereof, with full costs of suit to any person who shall sue for the same."

his having a good defence on the merits as to a part, and admitted the residue, and the Commissioner then dispensed with the bond under s. 82: Held, allowing exceptions to the ruling of Mr. Baron Martin in an action to try the validity of the Act of bankruptcy thereon, that no act of bankruptcy had been committed.

THIS was an action directed by the Court of Bankruptcy, in order to try whether the plaintiff had committed an act of bankruptcy. It appeared that upon his being summoned, under the 12 & 13 Vict. c. 106, ss. 78, 79, to admit a debt due to the defendant, the plaintiff admitted a part of the debt, and deposed to his having a good defence on the merits as to the residue, and Mr. Commissioner Evans then dispensed with the bond required by s. 82. On the trial before *Martin, B.*, the jury were directed that the plaintiff had committed an act of bankruptcy on the eighth day after filing the admission of the part of the debt, and the defendants accordingly obtained a verdict.

*Pearson* appeared in support of exceptions from this ruling; *Hugh Hill* for the defendants, *contra*.

The Court said, that as the provisions of the 82nd section had not been followed the plaintiff had not committed an act of bankruptcy, and the judgment was accordingly reversed.

### Court of Bankruptcy.

(*Coram Mr. Commissioner Evans*.)

*In re Milsted*. March 17, 1853.

BANKRUPTCY LAW CONSOLIDATION ACT.—  
CHANGE OF VENUE.

An application, under the 12 & 13 Vict. c. 106,

s. 90, to remove the petition from London to Bristol, was refused where a long time had elapsed, and the stock was in London, and the assignees who were traders also resided there, although it was alleged the petition had been improperly filed and prosecuted in London.

THIS was an application under the 12 & 13 Vict. c. 106, s. 90, to remove the petition in this case from London to Bristol, on the ground it had been improperly ordered to be filed and prosecuted in the former place. By that section it is enacted, that "every petition for adjudication of bankruptcy against or by any trader liable to become bankrupt, shall be filed and prosecuted in the Court within the district of which such trader shall have resided or carried on business for six months next immediately preceding the time of filing such petition, except where otherwise in this Act specially provided:—provided always that the senior Commissioner shall have power, whenever he may deem it expedient, to order any petition against or by any trader to be prosecuted in any district, with or without reference to the district in which the trader shall have resided or carried on business."

*Esparie Morrison*, 1 Mont. Deac. & De G. 635; *Esparie Blake*, 1 Mont. Deac. & De G. 262; *In re Oram*, 3 ib. 330; *Esparie Mitchell*, ib. 397; *Esparie Downes*, 1 De Gex, 390, were cited.

The Court said, that as so long a time had elapsed, and the stock was all in London, and the assignees, who were persons in trade, also resided there, it would not be beneficial to the creditors to send the petition to Bristol, and the application must therefore be refused.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### LANDLORD AND TENANT.

#### AGREEMENT FOR LEASE.

*Tenancy under agreement to grant a lease.*—*Notice to quit.*—*A.*, who held a long lease of certain premises, and *B.*, by writing, (not under seal), agreed, by words of present demise, for a lease for three years, from 29th September, 1845, by *A.* to *B.*, and that, if *B.* should, at the end of the term of three years, desire to renew his tenancy, then, on notice given by *B.*, six months before the end of such term, *A.* should renew the tenancy for a further term of three years, or grant an underlease of *A.*'s term, at the option of *B.* *B.* was let into possession and paid rent, and afterwards gave notice that he desired a renewal of his tenancy; but the renewal was not agreed upon; and the original term of three years expired. *A.*, without giving notice to quit, brought ejectment, laying the demise on 30th Sept. 1848.

Stat. 7 & 8 Vict. c. 76, was in force from 1st Jan. 1844, to 1st Oct. 1845.

Held, that the demise, not under seal, ope-

rated as an agreement for a lease, and that, by the payment of rent, *B.* became tenant from year to year, subject to the terms of the agreement; that his interest expired of itself at the end of the term of three years first-mentioned in the agreement, without any notice to quit; and that his having exercised his option to take a renewed term, and given notice accordingly, gave him no interest in the land; and, consequently, that the plaintiff was entitled to the verdict. *Doe dem. Davenish v. Moffatt*, 13 Q. B. 257.

Case cited in the judgment: *Doe dem. Bromfield v. Smith*, 6 East, 530.

#### ARRIERS OF A FEE-FARM RENT.

*A.* was, from the 2nd July, 1805, till the 10th of July, 1841 (when he was found a lunatic), and *B.*, his committee, had ever since been, seised as of fee of two-thirds of a fee-farm rent of 20l. 5s. per annum, payable on the 25th of September and the 25th of March, created by letters patent of the 29 Hen. 8. No payment

of this rent, or of any part thereof; had been made since March, 1831, nor had there been any acknowledgment in writing relating thereto.

**Held**, that the case was governed by the 42nd section of the 3 & 4 Wm. 4, c. 27, and, consequently, that neither the lunatic nor his committee was entitled to recover any arrears of the rent after the expiration of six years from the 29th of Sept. 1831. *Humfrey v. Gery*, 7 C. B. 567.

#### DILAPIDATIONS.

See *Vicarage*.

#### DISTRESS.

1. *Sale of goods*.—How the five days are to be calculated.—In construing 1 Stat. 2 Wm. 4, c. 5, s. 2, which authorises the sale of goods distrained within five days next after the taking, the days must be calculated, as the rule now is in other cases, inclusively of the last, and exclusively of the day of taking. *Robinson v. Waddington*, 13 Q. B. 783.

2. *Liability of landlord for act of broker*.—A principal is not liable in trespass for the action of his agent, unless he authorised it beforehand, or subsequently assented to it with knowledge of what had been done. Therefore, where, in an action of trespass against a landlord, it appeared that he gave a broker a warrant to distrain for rent, and the broker took away and sold a fixture, and paid the proceeds to the defendant, who received them without inquiry, but without knowledge that anything irregular had been done: **Held**, that no such authority or assent appeared as would sustain the action. *Freeman v. Rosher*, 13 Q. B. 780.

Cases cited in the judgment: — *v. Gibson*, Lane, 30; *Lewis v. Read* 13 M. & W. 834.

3. *Warrant to distrain for rent*.—*Refusal to accept tender*.—Where a landlord gives a warrant to distrain for rent, he thereby authorises the bailiff to receive the rent if tendered, and, per Lord Campbell, C. J., *semble*, that the landlord cannot prohibit the bailiff from accepting such tender.

At all events, where a warrant is delivered to the bailiff, directing him to distrain and to proceed for recovery of the rent as the law directs, the bailiff cannot refuse a tender on the ground that he was afterwards forbidden by the landlord's attorney to receive it: and if, on that ground, though truly alleged, he proceeds to sell, he and the landlord are liable in trover. *Hatch v. Hale*, 15 Q. B. 10.

4. *Breaking out door of a stable to distrain*.—A landlord cannot break open the outer door of a stable, though not within the curtilage, to levy an ordinary distress for rent. *Brown v. Glenn*, 16 Q. B. 254.

Case cited in the judgment: *Poole v. Longueville*, 2 Wms. Saund. 284, c., note 2.

5. *Goods protected from distress for rent*.—*Auctioneer*.—Goods sent to an auctioneer for sale on premises occupied by him are privileged from distress for rent, although the place of sale is merely hired for the occasion, or the occupation has been acquired by the

auctioneer by an act of trespass. *Brown v. Arundell*, 10 C. B. 54.

Case cited in the judgment: *Adams v. Grane*, 1 C. & M. 380; 3 Tyrwh. 326.

See *Mortgagor*.

#### DOUBLE VALUE.

*Form of notice to quit*.—*Demand of possession*.—An action for double value under Stat. 4 Geo. 2, c. 28, s. 1, for holding over after notice to quit, is not supported by a notice that the landlord requires the tenant to give up possession at 12 at noon on, &c. (the day when the tenancy was determinable), at which time the landlord will attend to receive the keys and rent, and that, in the event of the tenant not so surrendering, the landlord will demand 7s. daily rent (a rate more than double the original rate of rent) till he can obtain legal possession.

For the requisition to deliver up the premises at noon is premature, and insufficient as a notice to determine the tenancy.

Although a notice to quit, when regular, operates also as a demand of possession under the Statute without a more specific demand, *semble*, that a notice having the above defect is not equivalent to a demand. *Page v. More*, 15 Q. B. 684.

Case cited in the judgment: *Wilkinson v. Colley*, 5 Burr. 2691.

#### EJECTMENT.

*Forfeiture*.—*Demise by estoppel*.—*Notice to quit*.—*A.*, in May, 1823, demised premises to *B.* for 80 years, with a proviso for re-entry in case the lessee, his executors, &c., should exercise or carry on, or permit to be exercised or carried on, the business (amongst others) of a victualler or publican. *B.*, in Nov., 1823, mortgaged to *C.*, and, in June, 1829, the mortgage term was assigned to *D.*, and ultimately became vested in *E.*

After *B.* had assigned to *C.*, and when he had no reversion, but a mere equity of redemption, he, by indenture, granted an underlease for 76 years to *F.*, with a proviso for re-entry similar to that contained in the original lease from *A.* Some of the mesne assignments were made subject to this underlease.

In ejectment by the legal representatives of *E.* for a breach of the covenant in the original lease, in using the premises as a public-house or beer-shop,

**Held**, 1st, that the underlease granted by *B.* operated merely as a demise by estoppel, inasmuch as he had not at the time of making it, or since, any legal interest; 2ndly, that the lessors of the plaintiff, or the persons under whom they claimed, not being parties to the underlease, or to any of the assignments which recognised and referred to it, were not bound by any covenants contained therein; 3rdly, that the payment to, and acceptance by, *E.* of rent under the underlease by *B.* to *F.* merely created a tenancy from year to year; and that such tenancy was well determined by a notice to quit served upon the attorney of the administratrix of the person who had paid the rent

to the lessors of the plaintiff, and under whom the defendant claimed. *Doe dem. Prior v. Ongley*, 10 C. B. 25.

#### EVIDENCE OF HOLDING.

*Payment of rent.*—The payment of rent by a tenant to an authorised agent, who pays over the rent to his principal, is evidence as against the tenant of the principal's title, although the agent do not disclose his principal's name at the time.

Where *A.* had paid rent to *B.*, the agent of *C.* and *D.*, and the property for which the rent was paid was subsequently conveyed to *C.* and *E.*, and *A.* still paid the rent to *B.*, but was not informed by the latter of the change, and *B.* paid over the rent to *C.* and *E.*: *Held*, that the payment so made was some evidence of the title of *C.* and *E.* to the property, and that, under the circumstances, there was no necessity (in an action of replevin by *A.* against parties claiming under *C.* and *E.*) for the proof of the conveyance to *C.* and *E.* *Hitchings v. Thompson*, 5 Exch. R. 50.

#### EXECUTION.

*Right of landlord to one year's rent.*—*Custodia legis.*—Stat. 8 Ann. c. 14, s. 1, makes it unlawful to remove goods taken in execution without paying one year's arrears of rent to the landlord; but it does not invalidate the execution itself. Goods, therefore, so taken are in *custodia legis*, and cannot be distrained on by the landlord for the year's rent; and they are equally in *custodia legis*, for this purpose, whether they are in the hands of the sheriff or of his vendee. *Wharton v. Naylor*, 12 Q. B. 673.

Cases cited in the judgment: *Peacock v. Purvis*, 2 Brod. & B. 362; *Riseley v. Ryle*, 11 M. & W. 16; *Smallman v. Pollard*, 6 M. & G. 1,001; *West v. Hedges*, Barnes, 211; *Henchett v. Kimpson*, 2 Wils. 140.

#### FISHERY.

By agreement in writing, the plaintiff, let to the defendant at a yearly rent the right of fishing in a certain river with rod and line only. The defendant having so used the fishery, *held*, that the plaintiff might recover the rent under an indebitatus count for the use and occupation of the fishery, and that there was no objection to the particulars so describing his claim. *Holford v. Pritchard*, 3 Exch. R. 793.

#### MORTGAGOR.

*Right of distress.*—A mortgage-deed, executed by the mortgagor only, contained a clause whereby, "for the more effectual recovery of the interest, the mortgagor did attorn and become tenant to the mortgagee of the premises, at the yearly rent of 40*l.*, to be paid half-yearly, so long as the principal sum remained secured." The mortgagor continued in possession, and made several of these half-yearly payments: *Held*, that the subsequent occupation, connected with the covenant, created the relation of landlord and tenant, and that the mortgagee might distrain for a half-yearly payment in arrear. *West v. Fritche*, 3 Exch. R. 216.

#### NOTICE TO QUIT.

*See Agreement; Double Value; Ejectment.*

#### SURRENDER OF LEASE.

*By operation of law.*—*Eviction.*—*Argumentative traverse.*—In assumpsit, the first count stated, that *A.* and *B.* were tenants of certain chambers to one *C.* at a certain rent, payable quarterly; and that, in consideration that *A.* and *B.* would underlet the Chambers to *D.* at a certain rent payable quarterly, *D.* promised *A.* and *B.* that he would pay the said rent to *C.*, and that, if he should not do so, he would indemnify *A.* and *B.* in respect thereof, and pay the same to them; and the breach assigned was, nonpayment by *D.* of the rent due from *A.* and *B.* to *C.*: *Held*, that, whether the declaration meant to allege the contract to have been, that *D.* should pay *C.* the rent due from *A.* and *B.* to *C.*, or the rent due from *D.* to *A.* and *B.* under the demise which was the consideration for his promise, it was not to be taken as alleging that *D.*'s promise to pay *C.* was to extend further than his liability to pay rent under his own tenancy to *A.* and *B.*

*D.* pleaded, 6thly, a surrender (called a surrender by operation of law), by his delivering up the possession of the chambers to *A.*, and *A.* accepting possession thereof, with the intention of putting an end to the tenancy; averring that *A.*, in so accepting the possession, acted for and on behalf of himself and *B.*, with *B.*'s authority. To this plea *A.* and *B.* replied, that *D.*, of his own wrong, quitted possession of the chambers,—because they said it was agreed between them, in consideration that *D.* would become tenant of the said chambers to *A.* and *B.*, and indemnify them in respect of the rent, as in the first count mentioned, that, in case *A.* and *B.* should give notice to *D.* to terminate that agreement, and *D.* should be desirous of continuing his occupation of the premises, as tenant to *C.*, *A.* and *B.* should not occupy them, or interfere to prevent any arrangement which *D.* might be desirous of making for continuing his occupation of the premises under *C.*; that *A.* and *B.* were and continued ready and willing to suffer *D.* to continue such occupation under *C.*, and did not interfere to prevent *D.* from entering into any arrangement with *C.* as therein mentioned; that *A.* and *B.* received the keys of the chambers from *D.*, and took possession thereof, to the intent that they might let them for the benefit of *D.*; and that they refused to receive the keys, except on the terms that *D.* should not be released from his liability in respect of the agreement in the first count mentioned,—*absque hoc*, that all the estate, &c., and tenancy of *D.* in the chambers, were duly surrendered by act and operation of law, in manner and form, &c.: *Held*, bad, on special demurrer, on the ground that the inducement was inconsistent and incongruous with the traverse.

The 7th plea stated, that, before the rent became due from *A.* and *B.* to *C.*, it had been agreed between *A.*, for and on behalf of himself and *B.*, and with his authority, and *D.*,

that *D.* should deliver up the possession of the chambers to *A.*, and that, in consideration thereof, *D.* should be discharged from further liability for rent; and that *D.* did accordingly deliver up possession to *A.*, which he on behalf of himself and *B.* accepted: *Held*, that this plea set up a good defence by way of executed contract.

To that plea *A.* and *B.* replied, traversing that it was agreed by and between *A.*, for and on behalf of himself and *B.*, and *D.*, that *D.* should be discharged from liability to pay any further rent, and that possession was accepted, in pursuance of the alleged agreement, in discharge of *D.*'s liability, in manner and form, &c.: *Held*, that the traverse was too large.

*Quære*, whether the replication was not also bad for duplicity and multifariousness?

The 8th plea alleged, that, before the rent became due from *A.* and *B.* to *C.*, *A.*, with the sanction and authority of *B.*, evicted *D.*. Replication, traversing that *A.* evicted *D.*, with the sanction and authority of *B.*: *Held*, bad, the traverse being too large.

The 11th plea, to the 2nd and 3rd counts (the former being for use and occupation, the latter upon an account stated), averred, that, after the accruing of the causes of action, and before action brought, *D.* was discharged under the Insolvent Debtors' Act. Replication, that the causes of action accrued after the order and adjudication in the plea mentioned: *Held*, bad, as amounting to an argumentative denial of the allegation in the plea, that the order and adjudication were made after the accruing of the causes of action. *Smith v. Lovell*, 10 C. B. 6.

Cases cited in the judgment: *Gore v. Wright*, 8 Ad. & E. 118; 3 N. & P. 243; *Wallace v. Kelsall*, 7 M. & W. 264; 8 Dowl. P. C. 841; 1 H. & W. 25; *Lush v. Russell*, 5 Exch. R. 203.

#### TENANT FOR LIFE AND REMAINDER-MAN.

*Estoppel.—Presumption of surrender of term.*—Tenant for life, under a devise with a leasing power, let to defendant by a lease, not noticing the power. After the death of lessor, a succeeding tenant for life, under the same devise, brought ejectment against defendant, on the ground that the lease was not a valid execution of the power.

*Held*, that the defendant was not estopped from setting up an outstanding term of years in trustees, created by a tenant in fee, from whom the deviser had inherited, and that (before Stat. 8 & 9 Vict. c. 112, came into operation) a surrender of the term could not be presumed from mere lapse of time. *Doe dem. Lord Egremont v. Langdon*, 12 Q. B. 711.

Cases cited in the judgment: *Doe dem. Blacknell v. Plowman*, 2 B. & Ald. 573.

#### TRESPASS.

*Not maintainable by tenant.*—Where the interest of a tenant is determined by the death of a tenant for life under whom he holds, the possession ceases with the interest, and he cannot

maintain trespass unless he does some act indicating an intention to continue in possession. *Brown v. Nolley*, 3 Exch. R. 219.

Case cited in the judgment: *Smith v. Miles*, 1 T. R. 475.

#### UNDER-TENANT.

*Set-off.—Rent distrained for by superior landlord.*—In 1840, *A.* being lessee of a warehouse and cellar under a demise from *B.*, and also lessee under *C.* of other adjoining property, comprising *inter alia* a vault; *D.* became tenant from year to year to *A.* of the warehouse, and cellar, and vault, at an annual rent of 145*l.*, made up of 140*l.* for the warehouse and cellar, and 45*l.* for the vault. On the 27th October, 1845, *A.* became bankrupt, 92*l.* 10*s.* being at that time due as rent from *D.* to the bankrupt. The assignees, upon being appointed, elected to take the property held under *B.*; and on the 26th of February, 1846, elected not to take the property held under *C.* At Christmas, 1845, rent to the amount of 114*l.* 7*s.* 6*d.*, became due from *A.* to *C.*, for which amount, on the 19th of February, 1846, *C.* distrained upon the goods in the vault held by *D.*, who, to relieve himself of that distress, paid that sum to *C.* An action having subsequently been brought by the assignees of *A.* against *D.* to recover the above sum of 92*l.* 10*s.*, and 35*l.* for a quarter's rent due at Christmas for the warehouse and cellar: *Held*, that *D.* was not entitled to set-off the sum so paid by him to *C.*: *Held*, also, that the plaintiffs could well sue for the quarter's rent due since the bankruptcy in their representative character as assignees. *Graham v. Allsopp*, 3 Exch. R. 186.

#### VICARAGE.

*Dilapidations.*—*H.*, the incumbent of a vicarage, died leaving the buildings of the vicarage out of repair. *B.* succeeded him, and died, whereupon *S.* was appointed. The premises still being dilapidated, the executrix of *B.* was compelled to pay *S.* the amount necessary to put them in repair, and she then brought an action against the executor of *H.*: *Held*, that the action was maintainable, this being a personal right, which survived to the executrix; that she was entitled to recover so much as would compensate for the dilapidations which occurred in the time of *H.*; and that the fact of there being timber or stone on the glebe which might be used for repairs, was only a circumstance in diminution of damages. *Barbury v. Hewson*, 3 Exch. R. 558.

#### WARRANTY.

*No implied warranty of fitness for habitation arises from a mere contract of letting.*—There is no implied duty in the owner of a house which is in a ruinous and unsafe condition, to inform a proposed tenant that it is unfit for habitation: and no action will lie against him for an omission to do so, in the absence of express warranty, or active deceit. *Keates v. Earl of Cadogan*, 10 C. B. 591.

# The Legal Observer,

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SATURDAY, APRIL 2, 1853.  
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## JURISDICTION OF THE ECCLESIASTICAL COURTS.

### MANIFESTO FROM DOCTORS' COMMONS.

It is quite clear that the limited but highly respectable and influential section of the Profession which is associated with the name of Doctors' Commons, is not about to submit without a struggle to the sentence of condemnation which the House of Commons—on this occasion it must be admitted responding to the opinion of the general community—seems disposed to pass upon the Ecclesiastical Courts. A paper, framed with great labour and ability, has been put forward, with the sanction of the heads of the Profession practising in Doctors' Commons, avowedly with the modest and confined purpose of “making the public acquainted with the system pursued in the Prerogative Court of Canterbury,” but really with the intention of showing how much may be said in favour of the maintenance of the jurisdiction now exercised by the Ecclesiastical Courts, and how little advantage would result from the transfer of the jurisdiction to any tribunal differently constituted.

In time of peace, the profits made in the Prerogative Court from testamentary causes is the source from which the emoluments of that branch of the Profession congregated in Doctors' Commons chiefly arises, and the great object aimed at in the manifesto alluded to, is to suggest the inexpediency of interfering with the existing Courts of Probate. Suits for church-rates, brawling, and defamation, nay, even matrimonial causes, may be taken away without much lamentation, or any great public injury, but if the system now in operation for the administration of the personal estates of persons dying testate and intestate be

touched, our friends at Doctors' Commons predict that, *the kingdom will be convulsed by it.*

Without participating in the apprehensions upon which this suggestion is founded, we are prepared to admit that the question upon which the Legislature and the Government is now expected to act, is one, the importance of which can hardly be exaggerated. We believe it is truly stated, that “the public has no idea of the nature and amount of the common form business transacted in the Prerogative Registry. Nearly 12,000 grants of probate and administration have passed its seal in the last twelve months, disposing of property which may be estimated at about 50,000,000*l.* sterling. The stamp duties during that time gathered in to the revenue by the agency of the practitioners, exceeded 800,000*l.*” We are disposed to agree, therefore, with those who consider this as a “national and not a professional question,” and in that view advocate the transfer of jurisdiction to a tribunal, which cannot only grant probate of a will, but also try its validity, and carry out its provisions in every case.

As may be expected, the opponents of change take courage in this instance from a consideration of the numerous and abortive efforts made, from time to time during the last twenty years, to effect that which is now regarded by the public generally as a necessity, and treated in and out of Parliament—indeed everywhere but in Doctors' Commons—as determined upon. After adverting to the fact, that so long since as the year 1833, the Real Property Law Commissioners recommended the transfer of jurisdiction in testamentary and matrimonial causes to a Court of Equity, the following enumeration is given of measures introduced in Parliament, which, in the



significant language of the manifesto, "came to an untimely end," and undoubtedly afford preguant evidence of the potency of the influences which Doctors' Commons can bring to bear, in baffling the attention of Parliament, overawing rival administrations, and eluding and delaying a reasonable and much desired reform. We are informed that :—

"1. In 1835 Lord Brougham introduced a bill having for its object to provide one testamentary Court for each province.

"2. In the same year the Attorney and Solicitor-General and Dr. Lushington introduced a bill for the establishment of one Court only.

"3. In 1836 the Lord Chancellor brought in a bill for the establishment of one Court for England and Wales, to be called 'Her Majesty's Court of Probate,' &c.

"4. In the same year Serjeant Goulburn, Mr. Cayley, and Mr. Jervis brought in a bill, the object of which was to alter the local jurisdictions of all Ecclesiastical Courts, giving to the Prerogative Court of Canterbury exclusive jurisdiction in London and the counties around it, and assigning a limited jurisdiction to the other Courts.

"5. In 1843 Dr. Nicholl, Sir James Graham, and the Attorney-General brought in a bill to consolidate the Testamentary Jurisdiction of England and the Court of Arches.

"6. In the same year Dr. Elphinstone, Mr. Stock, and Mr. Hayter brought in a bill to consolidate the Arches and Prerogative Courts.

"7. In 1824 Lord Chancellor Lyndhurst brought in a bill to establish Metropolitan and Diocesan Courts throughout the kingdom, and give Contentious Jurisdiction to each.

"8. In 1845 Lord Cottenham brought in a to establish one Court of Probate in Lon-

The number of abortive attempts made by various persons, is referred to as an evidence of the difficulty which exists in dealing with the subject, but must it not also be regarded as an evidence of the unsatisfactory footing upon which the jurisdiction is felt to stand, which induced men, entertaining on all other public questions the most adverse views, to concur in thinking, that in this instance, at all events, reform and amendment was needed? The document in question is framed with too much judgment and discretion to fly in the face of public opinion, by contending that the present system is altogether perfect. It is admitted "that the Courts of Probate as they now exist are too numerous, that they are susceptible of improvement," and that "practical amendments of the jurisdictions would not be resisted," but the proposed transfer of any portion of the testamentary jurisdiction is to be resisted to the death,

upon the grounds plausibly but concisely stated in the following extract :—

"In the Prerogative Court of Canterbury is daily transacted with order, with accuracy, and with despatch, an amount of business unknown to any other Court in the kingdom, perhaps in the world, any interruption to which would be attended with such alarming results, that, even were its transfer to another Court absolutely necessary, the wisest would shrink most from the responsibility of the measure.

"The same Court exercises a jurisdiction in contentious matters intimately associated with that in common form, which has for years been transacted to the satisfaction of the public generally, with credit to the administration of the law and without reproach to its practitioners.

"The suggested evils arising out of what may be defective in its jurisdiction are rather theoretical than practical, and, when they are not otherwise counterbalanced by corresponding advantages, are easily susceptible of amendment."

The importance of the duties devolving upon a proctor in proving a will are stated in the "manifesto," with a clearness and minuteness of detail which indicate the practical experience of the writer, and afford a useful lesson to such of our readers as may hereafter, from the altered state of the law, be called upon to perform similar duties on behalf of his clients' without resorting to the agency of that select body which has hitherto monopolised this lucrative branch of practice. It is said :—

"No two things can be more distinct than proving and registering a will.

"The registering is but the entry or record of an instrument correct in form, and on the face of it duly executed. For the proving of a will, however, preparatory to its registration, which is the final and formal act, it is necessary to look to the contents also; the formality of execution according to the statute being but a small part of what is requisite.

"The will must be inspected in the first instance with reference to the provisions of the Wills' Act, to see if it is duly executed, regard being had to what is necessary to its validity; or, if there exists a defect in the clause of attestation, in order that it may be supplied by the affidavit of an attesting witness.

"But supposing all to be clear in form as for registration, before the will can be proved much previous inquiry is needed.

"Is there an appointment of executors? and, if so, is it express, or implied, according to the tenor? In either cases is it general or limited? It may be the latter in respect to property, time, country; very commonly one or the other: and there are frequently codicils altering appointments made in testamentary papers of earlier date, or revoking previous instruments in whole or in part.

"Again, the executors may be, and not unfrequently are, dead, or they desire to renounce, or they decline to act, or are far away or have no agent in this country duly authorised, or their residence is unknown. What is to be done in their absence? Then arises the question as to the appointment of a residuary legatee. Is there one or more?—for life or absolute?—contingent or substituted?—how and where?—willing to act?—under what limitations entitled to the grant of administration (with the will annexed)? Or it may be that only a copy of the will (executed abroad) has been received. The necessity for a new limitation then arises. Or there is no residuary legatee named, or he is dead, or absent, or a minor, or the appointment is limited, contingent, with a substitution. And in the course of the will (which must be examined throughout) there may be found to occur occasionally interpolated sheets, more frequently—indeed, very commonly—erasures, interlineations, and alterations of various kinds. One among many that might be specified is found in the attempt frequently made by testators to defeat the provisions of the Act by obliterating parts of the will without the formalities prescribed by the Statute, and which must be accounted for.

"It often happens in like manner that in the will reference is made to schedules, intended codicils, &c., which must be subject of further inquiry.

"Persons in the decline of life, women more particularly, are prone to meddle with their testamentary acts, and so create innumerable difficulties.

"New cases continually arise. Many, and sometimes new questions, arise as to the property to be included in the estimate of the deceased's estate, to the value of which the executor or administrator must be sworn, and on which it is the duty of the proctor rightly to advise, as between the party on the one hand and the Government on the other, with a view to the protection of the revenue. The manner in which the stamps are provided by the proctors is not only a great convenience to the executors or administrators, but afford a security to the revenue against forgeries and fraud."

Assuming the accuracy of all that is here stated, without denying the extent of the responsibility falling upon the proctor, or the exemplary manner in which this class of practitioners discharge the duties devolving upon them, we venture to ask, why may not all this be done, as well, as economically, and more conveniently, by the private or family solicitor as by the proctor? Why should an executor or administrator be compelled to quit the professional friend he has "trusted and tried," and confide his interests and wishes to a stranger, however respectable and competent? There is nothing required from a proctor in proving a will which a solicitor is not at least as

competent to do; and considering the matter in this light, we deny that we are treating it as "a mere squabble between the practitioners in different courts." The power of selecting their legal advisers is one in which the feelings and interests of the public are materially concerned.

It is conceded, however, that the question presents a much wider basis. The constitution and procedure of the Ecclesiastical Courts are alike unsatisfactory. No adequate reason can be adduced to prove the necessity of separate tribunals for the administration of different kinds of property disposed of under the same will; or why there should be one tribunal to ascertain the fact if a will has been duly executed, and another, with a different mode of procedure, to try the validity of the instrument!

The manifesto from Doctors' Commons asserts, not only in "regard to expense, the Prerogative Court will bear comparison with any Court in Westminster-hall, either common law or equity;" but, somewhat to the surprise of those who have occasionally seen bills for business done there, it suggests, upon the authority of Mr. Freshfield, no doubt an experienced and competent judge in such matters, that "the charges made and allowed in the Ecclesiastical Courts are very moderate," and that the charges of proctors in those courts, as compared with the charges of solicitors in conducting similar cases in courts of law, "are quite unexceptionable." Be this as it may, the unnecessary multiplication of tribunals and of legal agents and advisers, must be attended with an increase of expense to the suitors, and no change in the testamentary jurisdiction can be expected to obtain the sanction of the Legislature, or the approval of the public, which does not secure to the latter the advantage of a considerable diminution of expense, in proceedings of the most frequent occurrence,—the proof of wills in the common form.

## THE LORD MAYOR'S COURT.

### MONOPOLY OF THE COMMON PLEADERS.

As most of our readers are aware, up to a very recent period, there were only four attorneys entitled to practise in the Lord Mayor's Court; but the Corporation of London, acting in accordance with the spirit of the age, and in pursuance of a design long contemplated, has at length removed the restriction as to this class of

practitioners, and thrown open the court to all attorneys of the Superior Courts who desire to become attorneys of the Lord Mayor's Court. As the matter at present stands, however, the liberal intention of the Corporation has only been half effected. By the actual or supposed constitution of the Court, four barristers—called common pleaders—are entitled to appear, as they allege, in exclusion of the other members of the bar, and those gentlemen have very recently insisted upon their alleged right, and persuaded the Recorder, who is the real Judge of the Lord Mayor's Court, to recognise the exclusive privilege of the common pleaders to the extent of laying it down as a rule, that in every case brought before the Court, one of the common pleaders *must* be retained at each side. Whilst the counsel of the Lord Mayor's Court succeed in maintaining this monopoly, the intentions of the Corporation to render their chartered privileges useful to the community will be practically frustrated, for the public cannot, and ought not to be compelled, to resort to any Court in which they have not the unrestricted power of selecting legal advisers—advocates as well as attorneys. It is to be lamented that personal interests of the narrowest character, should, in this instance, interfere with the exercise of a jurisdiction which may be employed with great advantage to the trading and commercial community.

The Lord Mayor's Court has not only the cognizance of all personal and mixed actions arising within the city and liberties, without any limitation of amount, but it also exercises a peculiar jurisdiction in cases arising upon the customs of London. Of these customs, the most important, perhaps, is the proceeding known by the description of "Foreign Attachment," which is frequently resorted to with great advantage when a debtor absents himself from England, leaving property in the hands of third persons, but without making any arrangement to satisfy his debts. The proceeding by foreign attachment is open to a plaintiff whenever the defendant does not appear, or is not found within the jurisdiction, and it enables the plaintiff to attach property or debts owing to the defendant from any person within the jurisdiction, and after default, to have judgment against the person so holding the defendant's property,<sup>1</sup> and who is thereupon, and after the

plaintiff has sued out execution, discharged from the defendant's claim. The expediency of permitting a plaintiff, in the absence of the defendant, to seize his property in the hands of a third party, who is not permitted to dispute the validity of the plaintiff's demand, has been much questioned, but, guarded as the custom is by various salutary regulations, it is understood to operate beneficially in practice, and seems especially applicable to the present circumstances of the country, when the number of absconding debtors is daily increasing, in consequence of the impulse emigration has received, and the new fields of enterprise opened in Australia and other colonies.

The Corporation of London are now, it is said, impressed with the necessity of enlarging the basis of those institutions of which they are the guardians, and we dare say, only require to be informed that the City Courts cannot be made useful to the public at large, until they are open to both branches of the Legal Profession.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COUNTY ELECTION POLL.

16 VICT. c. 15.

Provisions of 2 & 3 Wm. 4, c. 45, relating to duration of poll repealed; s. 1.

Regulating time for polling at elections for knights of the shire; s. 2.

Section 70 of 2 & 3 Wm. 4, c. 45, to remain applicable to elections; s. 3.

The following are the sections of the Act:—

An Act to limit the time of taking the poll in Counties at contested Elections for Knights of the Shire to serve in Parliament in England and Wales to One Day.

[18th March, 1853.]

Whereas it is expedient to restrict the continuance of the polling at every contested election of a knight or knights to serve in Parliament for any county or for any riding, parts, or division of a county to one day: Be it therefore enacted as follow:—

1. That so much of the Act passed in the 2 & 3 Wm. 4, c. 45, as authorises the continuance of the polling at every such contested election as aforesaid for two days, and the duties of the sheriff's deputy and poll clerks at such poll during those days, and fixes the commencement and limits the hours of polling on such

<sup>1</sup> The person in whose hands a defendant's property is attached, is called the *garnishee*,

from the French *garner*, to warn, because he is warned to come in and answer whether he is indebted as alleged.

days, and prevents the commencement of such polling on a Saturday, shall be and the same is hereby repealed.

2. At every contested election of a knight or knights to serve in any parliament after the 1st of October, 1853, for any county, or for any riding, parts, or division of a county, the polling shall continue for one day only, and the poll shall commence at eight o'clock in the morning and be kept open until five in the afternoon of such day, and the poll clerks to be employed at the principal place of election and other places shall, at the final close of the day's poll, enclose and seal their several books, and shall publicly deliver them, so enclosed and sealed, to the sheriff, under-sheriff, or sheriff's deputy presiding at such poll, and every such deputy who shall have received any such poll books shall forthwith deliver or transmit the same, so enclosed and sealed, to the sheriff or his under-sheriff, who shall receive and keep all the poll books unopened until the re-assembling of the court on the day next but one after the close of the poll, unless such next day but one shall be Sunday, and then until the Monday following, when he shall openly break the seals thereon, and cast up the number of votes as they appear on the said several books, and shall openly declare the state of the poll, and shall make proclamation of the member or members chosen not later than two o'clock in the afternoon of the said day, any Statute to the contrary notwithstanding.

3. The provisions concerning the adjournment of the poll in cases of riot or open violence, and other the provisions of sect. 70 of 2 & 3 Wm. 4, c. 45, shall be and remain applicable to every such contested election as aforesaid, as if the said section were re-enacted in this Act, the words "the day of polling" being substituted therein for the words "one of the two days of polling."

## NOTICES OF NEW BOOKS.

*The Law and Practice of Election Committees ; being the completion of a Manual of Parliamentary Election Law.* By SAMUEL WARREN, Esq., F.R.S., of the Inner Temple, one of her Majesty's Counsel, and Recorder of Hull. London : Butterworths. 1853. Pp. 658.

MR. WARREN has now completed his important work on Parliamentary Election Law and the Practice of Election Committees. The second volume has been somewhat delayed, but has received the advantage of the most ample consideration and recent experience. It comprises the result of all the latest Statutes and decisions, and the whole matter has been admirably collated and arranged both in regard to the subject matter and the convenience of the practitioner in consult-

ing the ample contents of the volume. We need not add that it displays the masterly composition and literary excellence for which the learned author is distinguished.

The first part of the work, which we noticed at the time of its publication (see 44 L. O., pp. 193, 242, 381, 418) was divided into thirteen chapters, treating of the Parliamentary Election Law of the United Kingdom of Great Britain and Ireland. The present volume, which completes this important work, occupies fourteen chapters,—the subjects of which are as follow :—

14. An Election Petition—its constitution and functions.
15. Security for Costs and Expenses.
16. The Petition and the Petitioners.
17. Lists of Objections to Voters. Jurisdiction of the Select Committee.
- 18, 19. Scrutiny.
20. Information and irregularities in the practical conduct of the Election.
21. Bribery.
22. Treating.
23. Property Qualification of a Candidate.
24. Agency.
25. Evidence.
26. Practice.
27. Costs.

Forms and Precedents are subjoined, applicable to all the matters included in the scope of the volume.

The whole work is of the first importance to all practitioners in both branches of the Profession in any respect engaged in business connected with the election of members of Parliament. We shall select for particular observation the chapters on Agency and Evidence as those in which a large proportion of the members of the Profession are peculiarly interested.

1st. As to *Agency*. In order to affect the member, whose return is sought to be invalidated, with responsibility for the acts of his agents at the election, there must first be satisfactory proof of authorised agency. Mr. Warren thus describes the acts to be looked for on such occasions :—

"I.—Being seen, more or less frequently, during the election, in company with the candidate, especially canvassing with him, or without him, and attending, more or less frequently, at his committee-rooms.

"II.—Being a member, more or less active and prominent, especially if as chairman, of the candidate's committee; and assisting in conducting the general business of the election—*as,*

i.—By making arrangements with the re-

turning officer about the hustings, polling-booths, and otherwise;

ii.—Engaging and paying check-clerks, agents, porters, messengers, door-keepers, &c.

iii.—Sending advertisements to the newspapers, drawing up and despatching addresses, circulars, &c.

iv.—Engaging committee-rooms.

v.—Examining bills, &c., &c.

“III.—Referring voters, or others concerned or interested in the election, to the candidate, who sees them without objection.

“IV.—Having such persons referred to him, by the candidate.

“V.—Bills checked and vouched by him afterwards paid by the candidate, or recognised by him.”

And the following instances are given in which it was held that the agency of an attorney was sufficiently proved :—

“*Great Yarmouth* [1848].—An attorney was constantly at the committee-room, attending to the business of the election there, and in the afternoon attending meetings of the committee, at which the sitting members were ‘frequently’ present. He had also disbursed 200*l.* for the payment of clerks and other persons employed in the election.

“Here, also, *prima facie* evidence was held to be established; and the attorney’s declarations were received against the sitting members, who were ultimately unseated, for “bribery, through their agents,” but without evidence of their knowledge or consent.

“*Horsham, Second*, [1848].—An attorney was present on behalf of the sitting member, when the polling arrangements were made with the town clerk. He canvassed with the sitting member; once introduced a voter to him; brought up voters to the poll; his clerk had attended at the registration previous to the election (with an avowed agent of the sitting member); was present at an entertainment given to the voters at an inn, when the sitting member attended, and was in the room which had been kept private, by order, for the sitting ‘member’s’ friends, and was seen conversing with him and the landlord. Here, also, a *prima facie* case of evidence was held to have been proved.”

2nd. In the chapter on *Evidence*, Mr. Warren’s acute attention to the several Statutes has detected an apparent exception to the admissibility of an *interested* witness before a Select Committee for the trial of an election petition. He points out that the Grenville Act, 10 Geo. 3, c. 16, s. 18, gave power to examine witnesses on oath, without allusion to interested witnesses. Then the Act 53 Geo. 3, c. 71, excepted interested witnesses. “At that time,” says Mr. Warren, “the law respecting interested witnesses was flourishing in full bloom.

They were excluded from a court of justice as though labouring under a moral leprosy.” Lord Denman’s Act, in 1843, removed the disabilities on the ground of interest, but excluded the *parties* to the record, and the provisions of the Act evidently applied to actions, suits, and proceedings in Courts of Justice. Mr. Warren thus proceeds :—

“Immediately after Lord Denman’s Act, viz., in 1844, was passed Stat. 7 & 8 Vict. c. 103; the 77th section of which retained the exclusive clause of the Acts of 1813, and 1828, doubtless without attention having been drawn to it; the draftsman mechanically transferring to the new Bill, the section contained in the old one; and again, in 1848, which is still more unfortunate, the same clause was inadvertently incorporated, with this faulty ingredient, into the Election Petitions Act, 1848. Even, therefore, had Lord Denman’s Act of 1843 applied to committees, it is repealed, *quoad* Select Committees, as far as concerns ‘an interested witness’ subscribing the petition. It is to be observed, however, that by the Election Petitions’ Act, 1848, the petitioner is not to sign the recognizance; but by s. 3 it is confined to the sureties; and by s. 2, the only person who can subscribe an election petition, must be a voter, or a candidate, who would be liable to reimburse their sureties, if the latter should be called upon to pay the amount of the recognizance. In the *Dunbar* case, a witness who had signed the petition, was objected to; but on its appearing that he had not entered into the recognizance, and had consequently no interest in the question of costs, he was held admissible. And again, where the petitioner admitted that he had retained the agent, whose expenses he believed himself liable to pay, and had subscribed to a fund to defray the costs of the petition, but had not entered into the recognizance, he was admitted as a witness. A surety to the recognizance, however, was of course rejected. The objection in each of these cases (which were previous to the year 1843) was, that the witness was interested in the result of the petition.

“Down to the year 1851, therefore, there undoubtedly existed difficulty as to the power of a Select Committee, notwithstanding Lord Denman’s Act, to examine a petitioner, otherwise proved to be ‘an interested witness.’ In that year, however, passed the Statute 14 & 15 Vict. c. 99, which, on a proper construction, appears to dispose of the difficulty in question.”

Still the question remains—are the “parties” referred to in the Act compellable to answer questions *tending to criminate themselves*? On this essential point, Mr. Warren observes, that—

“According to the law of England, though a man be *competent* to prove his own crime, to

adopt the language of Lord Eldon, 'the proposition is clear, that no man can be compelled to answer what has any tendency to criminate himself.' There is a cloud of authorities to support that proposition, as laid down by this transcendent lawyer,—and which is recognised in the United States, as well as in this country,—that if the fact to which the witness is interrogated, form but a SINGLE REMOTE LINK in the chain of testimony, which may implicate him in a crime or misdemeanour, or expose him to a penalty, or forfeiture, he is not bound to answer, '*nam nemo tenetur seipsum prodere.*' Now, bribery is a misdemeanour at both common and statute law, entailing on both parties to it fine and imprisonment, the forfeiture of the franchise, and pecuniary penalties; and no witness, consequently, is bound to answer any question tending to implicate himself in such a misdemeanour. Whether the answer may tend to criminate himself, or expose him to a penalty, or forfeiture, is a matter not left absolutely to the witness, but to the court, to determine, under all the circumstances of the case, as soon as the witness claims its protection. The court will not require him fully to explain how the apprehended effect might be produced, which would be simply compelling him to give the very evidence which he is entitled to withhold. It appears to be still an undecided point, whether the mere declaration of a witness, on oath, that he believes the desired answer would tend to criminate him, will suffice to protect him from answering, where the other circumstances of the case are not such as to induce the judge to believe that the answer would, in reality, tend to criminate the witness, or have that effect. The full operation of this protective rule, would be undoubtedly to restrict within narrow limits the disclosures which it is expedient for the public interests that Select Committees should have power to compel."

Having thus adverted to those parts of the work which appear peculiarly interesting, as well to the honourable candidate as to the solicitor who has the management of the proceedings at an election, we may not inappropriately notice a leading article in *The Times* of the 11th of March, in reference to the influence of attorneys on such occasions which it was supposed they had brought to bear on the question of the repeal of the Certificate Duty. The writer says:—

"Perhaps the most intimate relation in which attorneys stand to Parliament is the peculiar and very delicate assistance they have invariably rendered in procuring the return of the members themselves; though why an attorney should be wanted at all, it is not easy to say, when all that is to be done is for the candidate to declare his sentiments and the electors to choose or reject him."

Now, if the proprietors of *The Times* had a difficult matter of business to manage; if they were in perplexity in an action for a libel wherein they had to collect information which would satisfy a Court and jury that they had not exceeded the large power conceded to the press in animadverting on the conduct and motives of the parties censured, they must employ agents to transact the business. The editor and his subordinates cannot leave their posts:—to whom then would they apply? Why, to their very able, cautious, and energetic solicitor who would do that in their behalf which no other person—whether barrister or correspondent, however learned or talented—could effect. In managing the details of an election, let it be recollected that an attorney, besides having the confidence of his client in all transactions relating to his property, knows his tenants, and all means of fair and just influence,—is essentially a man of accurate habits of business,—accustomed to make arrangements for the punctual execution of complicated matters,—and can effect the greatest amount of business within the shortest time. Moreover, the attorneys who attend the Revising Barristers' Courts on the registration of voters, who are engaged in supporting or opposing the claims to vote, are the only persons fully acquainted with the state of the register, and are able to advise safely on the progress of the election.

We are aware, of course, that according to recent disclosures, other persons, as well as lawyers, have been engaged in these delicate transactions; but we think it has for the most part appeared that, with few exceptions, the blunders in such cases have been generally committed by those who are unskilled in the practice of the law.

Mr. Warren's book has the merit of pointing out all the dangers and difficulties which exist in Parliamentary elections, from the inconsiderate and injudicious conduct of friends and agents unacquainted with, or careless of the provisions of the law, to the unscrupulous agent who measures his merits by his success, without regard to the means by which he has attained it, or the successful result of a contest before a Parliamentary Committee. We cannot but think, therefore, that the best and safest agent in the conduct of a contested election is an attorney of intelligence, respectability, and experience.

## ANNUAL CERTIFICATE DUTY.

WE have but little to add to the information which we have from time to time been enabled to lay before our readers. Before our next publication the Parliament will have re-assembled, and the Chancellor of the Exchequer, according to his promise, will have fixed "an early day" for making his financial statement.

It will have been observed in the report of the debate on bringing in the Bill on the 10th of March, that the right honourable gentleman intimated that the Government might be disposed, in lieu of repealing the Annual Certificate Tax, to abate the duty on the Articles of Clerkship, which, he said, fenced in the attorneys, operated as a monopoly, and restrained free competition.

This supposed concession would be no boon to the members of the Profession who have all paid the duty. In truth, if there is to be "unrestricted competition" in the law, all the three taxes should be repealed. It happens, however, that the certificate duty was first imposed, and ought to be first removed. The others may follow if the money can be spared; but at present the attorneys are willing to leave the 120*l.* on articles and 25*l.* on admission undisturbed. These taxes, yielding 84,000*l.* a year, afford an answer to the auctioneers and others who also pay a personal tax, but to which they submit on account of its protecting them from the inroads of a multitude of petty competitors, who, having no probation through which to pass (like professional men) would spring up and reduce the emoluments of the present licensed auctioneers.

The offer, therefore, if it can be so called, of the Chancellor of the Exchequer, should be respectfully declined.

In the mean time, before the second reading of the Bill, every practitioner should put his name to a petition for the repeal of the tax, and write to every member with whom he may be acquainted. The demand is a just one, and ought to be granted.

## THE CERTIFICATE TAX INJURIOUS TO THE PUBLIC.

AMONGST the Petitions against this obnoxious impost, we observe the following statement, showing its injurious tendency in relation to the public:—

"That the certificate tax on attorneys and solicitors has a very injurious tendency by reaction on the public, especially in the case of young men at starting, who are obliged to pay it as a *condition precedent* to their earning the amount or any part of it, which it is believed in many cases is never realised, and in this respect it contrasts unfavourably with the property tax which is only levied on *realized income*.

"That the case of the attorneys is distinguishable from that of auctioneers, &c., inasmuch as the latter do not pay 150*l.* or more as taxes on their articles, admissions, and commissions, in addition to a premium; but your petitioners have no doubt that *all* taxes of this description stand in the same category, and react in a manifold degree on the public, and this has been recently experienced since the increase of tax on auctioneers, whose charges have been enhanced commensurately, and frequently beyond it; this being the invariable and natural consequence of a tax imposed on the necessities of life, whether food or raiment or the requirements, also indispensable, of professional services of any kind, whether legal, *medical*, or any other, and it would be equally impolitic (though alike in principle), to tax the latter as our Profession, and your petitioners are impressed also with the conviction that all taxes of the same class (beyond a trifling amount for the expenses of a registration, in cases where it is expedient), have a tendency to demoralisation, by tempting to a practice of self-redress through extortion."

No respectable attorney thinks of making a higher charge, or increasing the number of items in his bill of costs, on account of the annual tax; but amongst 10,000 men it may not uncharitably be supposed that some of them "recoup" their outlay in the course of the year by ingenious charges which the Taxing Master cannot strike off. On grounds of policy, therefore, as well as justice, the tax should be repealed,—pressing as it does on the honourable practitioner, whilst the unscrupulous repay themselves with interest for the advance.

## OPINIONS OF THE PRESS ON REPEALING THE CERTIFICATE DUTY.

The *Morning Post* of the 24th of March thus continues its support of the proposed repeal of this oppressive impost:—

"The Chancellor of the Exchequer defends the attorneys' certificate duty on the ground that the law gives the members of that branch of the profession a virtual monopoly. He says, 'The law had erected a high fence—a wall, as it were—around the profession of an attorney, and it likewise imposed upon that profession certain burdens. The noble lord's proposal was to take away the burdens, but to leave the

fence just as it was.' In other words, the wall is the stamp duty of 120*l.*, and the burdens are the certificate duties of 12*l.* and 8*l.* Considering the highly confidential, important, and difficult duties which solicitors and attorneys are constantly called upon to perform, the Legislature can scarcely be said to create a monopoly by guarding the very threshold of the profession by an impost which, with the compulsory examination, affords some guarantee to the public against the admission of improper and unqualified persons. The barrister pays his stamp duty on admission and on call to the bar, but here the power of the Chancellor of the Exchequer ends, unless the young barrister makes 150*l.* in his first year, when, of course, the income-tax collector commences his disagreeable visits, and exacts the inevitable 7*d.* in the pound.

"The case of the solicitor and attorney is entirely different. He first pays a large stamp duty, and then is for ever afterwards required to pay a certificate duty, to enable him to carry on the business of his profession—to enable him, in fact, to make a single shilling. Should his income amount to 150*l.*, he has to pay the additional tax of 7*d.* in the pound. It has been said—you tax the banker, the auctioneer, the horse dealer, *ergo*, it is just to tax the attorney. There is not the slightest analogy between these cases. The millionaire who wishes to open a bank, or the auctioneer who hopes some day to reign supreme at Garraway's, is not compelled to pay a preliminary stamp duty, or to serve an articleship of five years before he can commence business. They go with the money in their hands, and directly they have paid the duty they commence business. The article clerk has not only to pay a stamp duty of 120*l.*, and to serve five years, but he has to undergo an examination, which is not a mere matter of form, but a *bond fide* test as to his moral and professional qualifications. The doctor pays a stamp duty on his diploma—for the arms of the Chancellor of the Exchequer, like Briareus, stretch everywhere and reach every person—but he is not compelled to pay an annual duty, to enable him to dispense medicine and to visit his patients.

"We, therefore, think that the case of the attorney's certificate duty is an exceptional one, and that it is well worthy of the considerate attention of the Chancellor of the Exchequer. The amount which it produces is 120,000*l.* a year—a sum easily levied—which, in the eyes of a Chancellor of the Exchequer, must cover a multitude of sins of injustice; but it is nevertheless a practical restraint upon industry, which, in these days of *quasi* universal free trade is an anomaly, and something more. But the Chancellor of the Exchequer protests that the decision of the House upon such a point may disarrange the whole of his budget. No doubt it may—no doubt it is extremely inconvenient that 120,000*l.*, at one fell swoop, should be abstracted from the ordinary revenue of the year; but have not the remonstrants at this particular time special reasons on which

they have a right to advance their claims to the indulgent consideration of the legislature?

"It cannot be doubted that the tendency of all modern law reforms has been to diminish the gains of professional men. Supposing that their profits were at one time so inordinate that they scarcely condescended to notice this exaction of 12*l.* or 8*l.*, the case is now very different. Law in all our courts has become cheap, and has been brought home to every man's door; and, although the junior common law bar has suffered more materially than have the solicitors by the change, we do not believe that the latter are in such flourishing circumstances as to think that an annual item of 12*l.* or 8*l.* is altogether unimportant in their yearly disbursements."

## TAXATION OF CONVEYANCING COSTS IN CHANCERY.

It will be recollected that the late Lord Chancellor St. Leonards, on the 24th of December last, intimated to the Taxing-Masters—

"That in his Lordship's opinion, where, in pursuance of any direction by the Court or Judge, or of any request by a Master in Ordinary, drafts are settled by any of the conveyancing counsel, under 15 & 16 Vict. c. 80, s. 41, the expense of procuring such drafts to be *previously* or subsequently settled by other counsel, is not to be allowed on taxation, as between party and party, or as between solicitor and client, unless the Court shall specially direct such allowance. This intimation, however, is not to prevent the allowance of the expense in cases which may already have occurred, where, in the judgment of the Taxing-Master, there has been a reasonable ground for laying the papers before other counsel."

There appears to be some difficulty in carrying this direction into full effect. Where there is no expectation of the parties disagreeing in the form of a deed, the instructions and papers are laid before the Conveyancing Counsel usually employed by the Solicitor who is entitled to prepare the deed. If afterwards a difference of opinion should arise, and the question be brought before the Judge at Chambers, or the Master, and he should not be satisfied with the form of the draft, he may of course refer the question to one of the six Conveyancing Counsel; but it seems unjust to disallow the fee paid to the party's counsel,—the papers having been submitted *bond fide* previously to any question on the subject.

It cannot of course be intended that the patronage of the Lord Chancellor should operate to the injury of the Conveyancing Counsel, usually consulted by the respective



solicitors. No doubt the Lord Chancellor will remedy any grievance of this kind as soon as it may be brought before him.

### PROPOSED AFFIRMATIONS IN LIEU OF OATHS.

SIR,—I am rejoiced to find that an agitation is in progress with a view to the extension of the Act substituting, in certain cases, declarations in lieu of oaths. The honourable member by whom the subject was brought before the House of Commons the other evening, appears to project the total abolition of oaths. This is perhaps going a little too far. In public Court—when questions of life, liberty, or property are at stake—the check afforded by an oath may properly be required. All that can be asked in such a case is, that in administering the oath, due solemnity be observed—which, I regret to say, cannot be affirmed is the case at present. It has been, however, by me a long-entertained opinion, that in no case but in giving testimony in Court should an oath or affirmation be ex-

acted. The service of writs, summonses, &c., the due attendance at Judges' Chambers, the acknowledgments of married women, and all similar cases, ought to be proved by declaration. The slight temptation to untruth (if there be any) would be as effectually counteracted by a dread of the penalties annexed to a misdemeanour as by a dread of the guilt or temporal consequences of perjury; and by making the administration of an oath an event of rare occurrence, we should proportionably enhance the public regard for the sanctity of an oath.

I should be glad to know whether my sentiments are participated in by yourself and by the Profession of which I am a member. Should it fortunately happen that your views are in accordance with my own, I would urge upon you to exhort the Incorporated Law Society and the kindred societies throughout the kingdom, to second with their influence the exertions of Mr. Pellatt, and confident that so good a cause in such able hands could not fail to be victorious, would leave the matter with you in full assurance of success.

A. Z.

### THE ACCOUNTANT-GENERAL'S ACCOUNT OF THE EXPENSES OF THE COURT OF CHANCERY AND RECEIPTS FOR FEES.

#### PAYMENTS OUT OF THE SUITORS' FUND,

For the Year commencing the 2nd of October, 1851, and ending the 1st of October, 1852.

	£	s.	d.	£	s.	d.
To Cash paid Lord Chancellors, Lord Truro and Lord St. Leonards' Salary . . . . .				6,795	17	5
— Lord Justice Bruce's ditto . . . . .				4,321	5	4
— Lord Justice Lord Cranworth's ditto . . . . .				4,305	8	9
— Vice-Chancellor Bruce's ditto . . . . .				1,253	2	4
— Vice-Chancellor Turner's ditto . . . . .				4,854	3	4
— Vice-Chancellor Parker's ditto . . . . .				3,601	1	1
— Nine Masters' Salaries, at 2,500 <i>l.</i> per annum, and proportion to one deceased . . . . .	22,259	5	2			
— Accountant-General's Salary as Master . . . . .	582	10	0			
— Pension to one retired Master's Clerk, at 66 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> per annum, and a proportion to one resigned . . . . .	838	16	0			
— Pension to one retired Master, at 1,500 <i>l.</i> per annum, with proportion to one deceased . . . . .	1,958	8	2			
— Total Masters . . . . .				25,638	19	4
— Accountant-General's Salary . . . . .	873	15	0			
— Ditto expenses of office, office-keeper, water-rate, stationery, &c. . . . .	436	17	8			
— Twenty-six Clerks' Salaries . . . . .	6,716	17	0			
— Pension to a retired Clerk of 450 <i>l.</i> per annum . . . . .	436	17	8			
— Total Accountant-General's Office . . . . .				8,464	7	4
— Two Examiners' Salaries (in part), remainder being charged on the Suitors' Fee Fund . . . . .	582	10	0			
— Retired Examiners' Pension . . . . .	194	3	4			
— Total Examiners . . . . .				776	13	4
— Three Clerks in the Clerks of Accounts' Office . . . . .				255	7	5
— Officers of the Lord Chancellor's Court:—						
Usher . . . . .	291	5	0			
Court-keeper . . . . .	87	7	8			
Persons to keep order . . . . .	293	2	11			
Tipstaff . . . . .	74	16	7			
Serjeant-at-Arms . . . . .	569	3	1			

	£	s.	d.	£	s.	d.
To Cash Paid Officers of the Lords Justices' Court:—						
Secretaries . . . . .	575	2	4			
Ushers . . . . .	359	9	2			
Trainbearers . . . . .	144	11	6			
Persons to keep order . . . . .	108	1	4			
— Officers of Vice-Chancellor Kindersley's Court:—						
Secretary . . . . .	277	16	0			
Usher . . . . .	185	4	0			
Trainbearer . . . . .	92	12	0			
— Officers of Vice-Chancellor Parker's Court:—						
Secretary . . . . .	291	5	2			
Usher . . . . .	194	4	5			
Trainbearer . . . . .	96	6	11			
Court-keepers . . . . .	149	12	8			
— Officers of Vice-Chancellor Turner's Court:—						
Secretary . . . . .	291	5	0			
Usher . . . . .	194	3	4			
Trainbearer . . . . .	97	1	8			
Court-keepers . . . . .	155	6	8			
Total Officers of Courts . . . . .				4,527	17	5
— Surveyor's Salary . . . . .				77	13	4
— Compensation to the late Officers of the Court of Exchequer . . . . .				5,057	14	4
— Solicitor to the Suitors, in lieu of Costs . . . . .	1,200	0	0			
For Insurance . . . . .	45	16	8			
Disbursements . . . . .	98	4	5			
— Costs of Contempt, under Lord St. Leonards' Act . . . . .	30	17	5	1,344	1	1
— Expenses of Courts, Registrars' offices, Masters' offices, Report and other offices, for repairs, rates, stationery, coals, candles, gas, servants' wages, &c. . . . .				4,435	5	11
Total Payments . . . . .				75,739	15	2

PAYMENTS OUT OF THE SUITORS' FEE FUND.

	£	s.	d.	£	s.	d.
Compensation to two Masters, at 725 <i>l.</i> per annum . . . . .	1,450	0	0			
Ten Masters' Chief Clerks' salaries, at 1,000 <i>l.</i> each per annum . . . . .	9,391	6	0			
Nine Masters' Junior Clerks' salaries, at 150 <i>l.</i> each per annum . . . . .	1,265	4	5			
Total Masters . . . . .				12,106	10	5
Salaries to eleven Registrars . . . . .	16,117	18	7			
Compensation to ditto, under 3 & 4 Wm. 4, c. 94, s. 48, and 5 Vict. c. 5, s. 63 . . . . .	3,854	6	9			
Salaries to fourteen Registrars' Clerks . . . . .	6,486	19	2	26,453	4	6
Total Registrars . . . . .						
Salary to Master of Reports and Entries . . . . .	940	4	4			
Ditto to two Clerks of Entries . . . . .	255	1	1			
Salaries to Clerks of Accounts . . . . .	2,169	13	5			
Pension to late Master of Reports . . . . .	2,115	9	9			
Compensation to one Clerk of Entries . . . . .	100	0	0			
Total Report Office . . . . .				5,560	8	7
Part of Examiners' salaries to two Examiners, at 700 <i>l.</i> per annum . . . . .	1,316	6	2			
Compensation to one Examiner, under 3 & 4 Wm. 4, c. 94 . . . . .	188	10	0			
Salaries to Examiners' two Clerks, at 150 <i>l.</i> per annum . . . . .	282	1	4			
Compensation to one ditto . . . . .	183	0	10			
Total Examiners . . . . .				1,974	9	2
Salaries to three Clerks of Affidavits . . . . .				1,670	13	1
Four Vice-Chancellors' Clerks' Salaries . . . . .				600	0	0
Salaries, &c., under 5 & 6 Vict. c. 84:—						
Two Masters in Lunacy . . . . .	4,000	0	0			
Travelling expenses . . . . .	683	18	6			
Salaries to seven Clerks to Masters in Lunacy . . . . .	2,020	0	0			
Rent of premises . . . . .	330	0	0			
Expenses of office . . . . .	502	3	9			
Salary of Registrar in Lunacy . . . . .	800	0	0			



	£	s.	d.
Fees received by Taxing Masters . . . . .	29,654	9	11
" " Clerk of Enrolments . . . . .	7,358	7	6
" " Record and Writ Clerks . . . . .	13,869	18	11
" " Petty Bag Office . . . . .	785	6	10
" " Master of Rolls' Secretary . . . . .	32	4	0
Fees received under Winding-up Act . . . . .	1,259	16	6
Cash received from the Commissioners of Inland Revenue . . . . .	6,630	17	1
Cash brought over from various Causes, Matters, and Accounts, in lieu of Fees paid at Taxing Masters' . . . . .	15	0	0
Cash brought over from Account of Moneys arising from Sale of Six Clerks' Office . . . . .	154	14	0
Cash brought over from Account Board of Visitors of Lunatics . . . . .	3,872	13	6
	£135,347	14	6
Excess of Fees above Charges for the year ending 25th Nov., 1852 . . . . .	3,255	18	3
	£132,091	16	3

## ENFRANCHISEMENT OF COPYHOLDS.

### DUCHY OF CORNWALL.—MANOR OF KENNINGTON, SURREY.

By the various Acts for the Enfranchisement of Copyhold Estates, the Legislature has from time to time shown an anxious desire to reduce old copyhold estates to common soage, in consideration,—1st, of a gross sum of money; 2nd, a corn rent-charge; or 3rd, of a conveyance of land, parcel of the manor.

The Crown has, from time to time, by passing the Bills, admitted the principle. I am, however, utterly at a loss to imagine, why the Duchy of Cornwall, *including the Manor of Kennington*, the property of his Royal Highness the Prince of Wales, should be so tenaciously excluded from the operation of the Acts. Surely, if enfranchisement was desirable in one manor it was equally so in another and an adjacent one. It cannot be from a wish to levy the *fees* or to maintain the old feudal system, which, after nearly eight centuries, may well be suffered to die a natural death. For what possible object then can the system be maintained? I have too profound an opinion of the good sense and noble conduct of Prince Albert, not to think that he would gladly lend his aid to enfranchise these copyholds, and prevent the constantly recurring heartburnings between lord or steward and tenant, as to the fines demanded, and which exceed the fines paid by any other manor in the kingdom.

CIVIS.

### MANOR OF KENNINGTON.

Perceiving that the Attorney-General has given notice of motion for leave to bring in a Bill to amend and explain the Copyhold Acts, I trust the honourable gentleman will not fail to extend his amendments so as to include the Manor of Kennington, parcel of the Duchy of Cornwall, that the tenants of the manor may enjoy the benefit of the Acts for Enfranchise-

ment, from which the manor is most unaccountably excluded.

A COPYHOLDER.

## SELECTIONS FROM CORRESPONDENCE.

### AMENDMENT OF THE LAW OF LANDLORD AND TENANT.

It is well-known that a landlord may within a limited period follow goods clandestinely removed,—rent being in arrear. The goods are taken into an empty house, where they are seized by the landlord for his rent, for which the tenant commences an action against him, falsely alleging they are not the same goods as were removed. In order, therefore, to avoid any such difficulty on the part of the landlord in future, I would suggest that they should be held to be the identical goods, unless positive proof was given to the contrary.

CIVIS.

### CHANGING THE VENUE.

SIR,—Your readers are no doubt aware, that under the *old practice* there were two modes in which a defendant could change the venue—the one by obtaining a side-bar rule on production of the common affidavit—the other by making an application to the Court or a Judge for a special order on particular grounds stated—and I have no doubt but what they are also aware that the first-mentioned branch of the practice was followed whenever it would be the means of delaying a plaintiff and the affidavit could be made.

Now, on referring to the New Rules, I found one of them (No. 18), which I thought was intended to prevent this abuse of the power to change the venue. The rule states "that no venue shall be changed without a *special order* of the Court or a Judge, unless by consent of the parties." However, I find (by experience), that this special order will be made on an application, supported by the common affidavit, and therefore, the only alteration effected by the rule is in the mode of proceeding.

J. B. C.

## NOTES OF THE WEEK.

## LAW APPOINTMENTS.

THE Queen has been pleased to appoint Robert Hodgson, Esq., to be Chief Justice for Prince Edward Island.

Her Majesty has also been pleased to appoint Robert Crosby Beete, Esq., to be First Puisne Judge of the colony of British Guiana.

Her Majesty has also been pleased to appoint Charles Douglas Stewart, Esq., to be her Majesty's Attorney-General, and James Clement Choppin, Esq., to be her Majesty's Solicitor-General for the Island of St. Vincent.—From the *London Gazette* of 29th March.

## REMUNERATION OF SOLICITORS.

Our courteous correspondent "A Law Reformer" will find that, allowing for the labour and skill bestowed by the solicitor in preparing the instructions for a bill in Chancery, and in seeing that the instructions are correctly followed, and for which he is legally responsible,—for all which services he is paid only a small fixed fee,—he is not overpaid by the charge for drawing the bill, which the equity draftsman prefers should be prepared by his pupils according to his own forms.

## RECENT DECISIONS IN THE SUPERIOR COURTS

## AND SHORT NOTES OF CASES.

## Lord Chancellor.

*In re Simpson and Isaac's Patent.* March 23, 1853.

PATENT.—SEALING.—EXTENSION OF TIME TO FILE SPECIFICATION.

*A patent was ordered on petition to be sealed as of October 2, where the party who opposed such sealing and who had obtained a patent on Feb. 12 last, did not clearly show the invention claimed was not new, and the petitioners had shown a prima facie case of their invention being a novel one, and a reference back was refused to the Solicitor-General, who had reported in favour of the petitioners, although the affidavits were contradictory, and the time within which the specification should be filed was also extended.*

Rolt and Drewry appeared in support of this petition, to have the Great Seal affixed to the petitioners' patent of Oct. 2 last, for making millboards from straw. The Solicitor-General had reported in favour of the petitioners against the claim of Mr. Peter Warren, who had obtained a patent on Feb. 12 last. It was also sought to have the time extended, within which the specification must be lodged.

*Malins and Hindmarch*, contra, submitted the patent should be sealed as of the 12th Feb., or a reference back be directed for further inquiry.

The Lord Chancellor said, that in order to induce the Court to refuse the sealing of a patent, very clear evidence was necessary that the invention claimed was not new. In the present case, there was no such clear proof as to justify such refusal, and as the petitioners had made out a *prima facie* case in favour of their alleged invention being a new one, their

patent would be ordered to be sealed forthwith as of Oct. 2 last, without putting the parties to the unnecessary expense of a reference back to the Solicitor-General. The time for lodging the specification would be extended to May 2, but the order must be without costs.

March 23.—*In re Sandford*—Petition refused with costs to re-open order for taxation and payment of costs in lunacy.

— 23.—*In re Hornby*—Certificate refused of signature of bankrupt's certificate in 1813, by Lord Eldon.

— 23.—*Trail v. Bull*—Part heard.

## Lords Justices.

*Aveling v. Martin.* March 18, 1853.

DEFENDANT IN CONTEMPT FOR WANT OF ANSWER.—ORDER UNDER 11 GEO. 4 AND 1 WM. 4, c. 36, s. 12.

*Motion for order under the 11 Geo. 4 and 1 Wm. 4, c. 36, r. 12, against defendant in contempt for want of answer, directed to stand over for notice to be served on such defendant.*

This was an *ex parte* application for an order under the 11 Geo. 4 and 1 Wm. 4, c. 36, r. 12, against one of the defendants, Mr. Matthew Martin, who upon being in contempt for want of answer, had been examined before Vice-Chancellor Kindersley, and handed over to the keeper of the Queen's Prison upon giving no satisfactory answer why he would not answer.

H. F. Bristowe, in support, referred to *Maitland v. Rodger*, 14 Sim. 92; Sidney Smith's Handbook of Chancery Practice, p. 163.

The Lords Justices said, that notice must be

given to the defendant and the motion then made.<sup>1</sup>

*Salvidge v. Tutton.* March 19, 1853.

PAYMENT OF MONEY OUT OF COURT.—POWER OF ATTORNEY.—PROOF OF EXECUTION OF.

*Order for payment of money out of Court under a power of attorney, upon affidavit of the handwriting of the petitioner thereto, although it purported to be duly executed and was certified by a notary public under his hand and seal, with a certificate of the mayor under his hand, and the seal attached of the city of Utica, New York, where the petitioner resided.*

THIS was a petition, seeking the payment out of Court of a sum of 180*l.*, three per cent. consols, under a power of attorney, executed by the petitioner, who resided at Utica, New York, purported to be duly executed, and which was certified by a notary public at that place, under his hand and seal, with a certificate of the mayor, under his hand, and the city seal attached.

*J. H. Palmer* in support, referred to the 8 & 9 Vict. c. 113, and 14 & 15 Vict. c. 99.

The *Lords Justices* said, the order would be drawn up on an affidavit, proving the petitioner's signature to the power of attorney.

*Sewell v. Ashley.* March 22, 1853.

JURISDICTION OF EQUITY IMPROVEMENT ACT.—SUMMONS ON EXECUTORS OF WILL OF MARRIED WOMAN.

*Held, that the Judge has jurisdiction to issue a summons, under the 15 & 16 Vict. c. 86, s. 45, on the executors of the will of a married woman, under a power of appointment contained in her marriage settlement, although the administration sought was limited to the estate over which the power extended.*

*W. M. James* and *Kinglake* appeared in support of this application by the direction of the Master of the Rolls, on behalf of the next friend of an infant legatee, for a summons under the 15 & 16 Vict. c. 86, s. 45, on the executors of a testatrix, to attend at Chambers before the Master of the Rolls, to show cause why an order should not be granted for the administration of her personal estate. It appeared the will was made by a married woman, under a power of appointment contained in her marriage settlement.

*R. Palmer* and *Prendergast* for the executors, contra, on the ground the administration sought was limited to the estate over which she had the power of appointment.

<sup>1</sup> Notice was accordingly given to the defendant, and the order was made on March 23, upon an affidavit being filed of such service.

The *Lords Justices* said, that the Act applied, and remitted the case back with this intimation.

March 23.—*Ex parte Warrington, in re Leake*—Order on appeal for admission of proof.

—23.—*In re Merchant Traders' Ship Loan and Assurance Company*—Application to be made to Commissioner to expunge proof.

—23.—*In re Direct Birmingham, Oxford, Reading, and Brighton Railway Company, ex parte Spottiswoode*—Reference back to the Master.

—23.—*In re Dover, Brighton, and Hastings Railway Company, ex parte Dayrell*—Motion refused to expunge name from list of contributories.

—23, 24.—*Johnson v. Shrewsbury and Birmingham Railway Company*—Appeal dismissed from Vice-Chancellor Wood.

### Master of the Rolls.

*Lovell v. Galloway.* March 18, 1853.

INJUNCTION TO RESTRAIN PROCEEDINGS AT LAW, UNTIL ANSWER.—AFFIDAVIT OF ALLEGATIONS IN BILL.

*Held, that there must be an affidavit of the truth of the allegations in a bill for an injunction to restrain proceedings at law until answer, and a motion for such injunction was directed to stand over for the same.*

*R. Palmer* and *Druce* appeared in support of this motion, for an injunction to restrain the defendant from proceeding with an action at law, until he had answered.

*W. Hislop Clarke* for the defendant.

The Master of the Rolls said, there must be an affidavit of the truth of the allegations in the bill, in order to prevent an injunction being obtained on a mere fictitious case or allegations.

March 23.—*Pulsford v. Richards and others.*—*Cur. ad. vult.*

### Vice-Chancellor Stuart.

*Layton v. Layton.* March 18, 1853.

MARRIAGE OF MINOR.—SETTLEMENT OF PROPERTY AS IF WARD OF COURT.

*A minor had been induced to contract a marriage with the defendant, on her uncle threatening to make her a ward of Court:*

*Held, that the husband was not entitled to have a moiety only of her property settled, but a decree was made as if the suit had been instituted before her marriage for a settlement of the whole of her property to her for life to her separate use, without power of anticipation, then to her husband for life, if he survived her, and then to the children.*

THIS bill was filed on behalf of Mrs. Mary

Layton, by her next friend, for a settlement of certain property, to which she was entitled under the will of her father, upon her mother's death in October, 1851. It appeared that soon after her death the plaintiff's uncle communicated his intention of making the plaintiff a ward of Court to the defendant's father, and that some of his family thereupon induced her to marry the defendant immediately, in order to avoid being involved in the threatened proceedings, and she was accordingly married on Nov. 5.

*Bagshawe* and *Rogers* for the plaintiff; *Bagshawe, jun.*, for her sister, who had taken out administration to her father.

*Bacon* and *Selwyn* for the husband.

The *Vice-Chancellor* said, that the marriage was contracted under circumstances of haste and improvidence, and under apprehension that the plaintiff was to be made a ward of Court, and the same protection must be extended to her property as if a suit had been instituted before her marriage, and the case could not be dealt with as if the husband had become entitled to the property after marriage, and one-half only be settled. There must, therefore, be a decree for a settlement on the plaintiff for life to her separate use, without power of anticipation, then to the defendant for life if he should survive her, and then to the children.

March 23.—*Colombine v. Penhall*; *Penhall v. Miller*—Order for settlement to be set aside as void against the assignees.

— 23.—*Penhall v. Rhin*—Deed set aside as against creditors.

#### *Vice-Chancellor Wood.*

*Farina v. Gebhardt.* March 23, 1853.

INJUNCTION.—USE OF LABELS AND TRADE MARKS.—LACHES.—COSTS.

*An injunction was refused on interlocutory motion, to restrain the sale of certain perfumed waters, and the use of labels and wrappers in colourable imitation of the plaintiff's trade marks, where it appeared a period of nine months had elapsed since the alleged infringement had come to the plaintiff's knowledge—costs to be costs in the cause.*

THIS was a motion for an injunction to restrain the defendant from selling certain perfumed waters in bottles, having labels or wrappers which should be colourable imitations of the plaintiff's labels or wrappers, and from using his trade marks thereon. It appeared that the infringement came to the plaintiff's knowledge in July last.

*Daniel* and *Hetherington* in support, said the delay was occasioned by the investigations which had taken place.

*Rolt*, *Waley*, and *Colquhoun*, contra, were not called on.

The *Vice-Chancellor* said, that the injunction could not be granted on the interlocutory mo-

tion merely, after the laches that had taken place, and the application was accordingly refused—the costs to be costs in the cause.

March 19.—*Newton v. Chorlton*—Injunction refused to restrain action at law.

— 23.—*Brenan v. Preston*—Order for appointment of solicitor as examiner, under 15 & 16 Vict. c. 86, s. 31.

#### *Court of Bankruptcy.*

(*Coram* Mr. Commissioner Evans.)

*In re Collier.* March 17, 1853.

TRADE FIXTURES.—ORDER FOR SALE UNDER S. 125 OF BANKRUPT LAW CONSOLIDATION ACT, ALTHOUGH MORTGAGED.

*Held, that trade fixtures belonging to a bankrupt are liable to be sold under the 12 & 13 Vict. c. 106, s. 125, as goods and chattels in his possession, order, or disposition, although they are, in fact, mortgaged.*

THIS was an application for an order under the 125th section<sup>1</sup> of the 12 & 13 Vict. c. 106, for the sale of certain property as being in the bankrupt's possession, order, or disposition. It appeared that the goods in question were trade fixtures, and that they had been mortgaged to Messrs. Smith and Son, in 1850, but continued in the possession of the bankrupt.

*Cur. ad. vult.*

The Court said, the case of *Fenn v. Bittleston*, 7 Exch. R. 152, which had been cited, did not apply to the present case, as there the goods, at the time of the mortgage, did not belong to the bankrupt. The question depended on whether trade fixtures passed to the assignees as goods and chattels. According to the decisions in *Poole's case*, 1 Salk. 367, and *Hellawell v. Eastwood*, 6 Exch. R. 295, it appears that trade fixtures must, as between landlord and tenant, be considered as goods and chattels, and under the Commissioner's warrant the messenger always takes possession of the tenant's fixtures which are scheduled among the furniture. Nothing would be more mischievous than mortgages like the present, as nothing gives a trader greater credit than that he appears to have well-furnished premises, and the order asked must therefore be made.

<sup>1</sup> Which enacts that, "if any bankrupt at the time he becomes bankrupt shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition, any goods or chattels, whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the Court shall have power to order the same to be sold and disposed of for the benefit of the creditors under the bankruptcy."

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## EVIDENCE.

## ATTACHMENT.

**Committal.**—*Non-payment of costs.*—An attachment issued by the Court of Chancery against a person, for a contempt for non-payment of costs, is evidence in support of an averment in a plea that he was committed by reason of a contempt of the Court of Chancery. *Cobbett v. Grey*, 4 Exch. R. 729.

Case cited in the judgment: *Cobbett v. Hudson*, 18 Law J., Q. B. 233.

## COLLATERAL ISSUE.

**Judge at Nisi Prius.**—A Judge at Nisi Prius is bound to try a collateral issue, where the reception of evidence depends on a preliminary question of fact. *Cleave v. Jones*, 7 Exch. R. 421.

Case cited in the judgment: *Wright v. Doe dem. Tatham*, 7 A. & E. 313.

## COMPETENCY OF WITNESS.

1. *Person on whose behalf action is brought.*—**Creditor of bankrupt.**—In an action brought against assignees in bankruptcy to try the validity of the fiat, creditors of the bankrupt, whether they have or have not proved, are competent witnesses in support of the fiat, by Stat. 6 & 7 Vict. c. 85, s. 1. *Colombine v. Penall*, 13 Q. B. 128.

2. *Under Stat. 6 & 7 Vict. c. 85.*—**Person on whose behalf action is brought.**—**Legatee.**—A will charged the devised land with the payment of legacies. In ejectment brought against the devisee to dispute the will,

Held that, since Stat. 6 & 7 Vict. c. 85, a legatee was a competent witness for the defendant. *Doe dem. Wingrove v. Nicholl*, 13 Q. B. 126.

## ENTRIES IN PARISH REGISTER.

**Directed by official person.**—Ejectment, in 1849, by reversioner for premises demised, in 1801, for three lives, and 21 years. Two of the *cestui que vies* had died before 1828. No witness was called who had ever known the third; and except the mention of him in the lease (which described him as aged 10 years), there was no proof that he had ever existed. No evidence of search for him was given.

Held that, to raise the presumption of his death, there should have been evidence that he had not been heard of by those persons who would naturally have heard of him had he been alive, or that search had been ineffectually made to find such a person; and that the mere fact that no witness called had heard of him was not sufficient.

Held, also, that an entry in the parish book, kept at the parish church, of a burial in the workhouse cemetery within the parish, was

evidence of the death of the person named, though it appeared that the incumbent sanctioned the entries in the book on the faith of statements made by others, and not from his personal knowledge of the burial. *Doe dem. France v. Andrews*, 15 Q. B. 756.

## EXAMINATION OF WITNESSES ABROAD.

1. *Mandamus to examine witnesses in India.*—**Execution of writ.**—**Return of depositions.**—Stat. 13 G. 3, c. 63, s. 40, enacts that, in all cases of indictments, &c., laid in the Queen's Bench for misdemeanors committed in India, it shall be lawful for that Court, on motion, to award a mandamus to the Supreme Court of Judicature at Fort William (established under the same Act), or the Judges of the Mayor's Court at Madras or Bombay, &c., who were thereby respectively authorised to hold a Court for the examination of witnesses concerning the matters of such indictment, to take such examinations, and to send them into this Court, where they were to be received as evidence. By a later Act, the Mayor's Court at Madras, as previously constituted, was abolished, and a Recorder's Court substituted; and, by a subsequent Act, the powers of that Court were taken away, and a Supreme Court created at Madras, with liberty to exercise the same jurisdictions, and invested with the same power, authorities, and privileges for that purpose, and subject to the same limitations, restrictions, and control, as the said Supreme Court at Fort William. And, afterwards, by Stat. 4 G. 4, c. 71, the Supreme Court of Madras was empowered and required, within its limits, to do all such Acts, &c., and things whatsoever as the Supreme Court at Fort William was or might be authorised, empowered, or directed to do.

Held, that the alterations in the Madras Court by these Statutes did not preclude the Court of Queen's Bench from issuing a mandamus under Stat. 13 G. 3, c. 63, s. 40, to the Madras Court, as finally constituted.

An information being filed in Q. B. for misdemeanors committed in India, a mandamus issued under this Act, directed "to the Chief Justice and other Judges" (who were two) of the Madras Supreme Court, requiring them to hold a Court and examine witnesses. Only the Chief Justice and one other Judge sat, and took the examinations.

Held, that the mandamus was well executed.

Stat. 13 G. 3, c. 63, s. 40, required that the examinations should be taken openly in Court *videlicet* voce, on oath, and should, "by some sworn officer of such Court, be reduced into one or more writing or writings on parchment;" and should be sent to the Court of Queen's Bench closed up, and under the seals of two or more of the Judges of the Madras Court; and the agent to whom the same should be delivered



by the said Judges was to make oath that he had received the same from them, &c. The two Judges who took the above-mentioned examinations at Madras made a return, stating that they had held a Court, and certifying that parchment writings, which they transmitted, were the examinations reduced into writing by T. and O., the clerk and deputy clerk of the Crown, openly taken *vidē voce* before the said Judges on the oaths of, &c. (witnesses), under the mandamus. And they certified that T. and O. were the clerk and deputy clerk, &c., and sworn officers of the Court. T. and O. added a certificate stating that they were present, as clerk and deputy clerk, during the proceedings, under the writ; and that the parchments annexed, containing the several examinations of W. H. B., &c. (witnesses), "are true and faithful copies of the *vidē voce* examinations of the said W. H. B.," &c., "who were severally produced, sworn and examined as witnesses in pursuance of the said writ of mandamus; such parchment writings having been transcribed in the Crown Office from the original examinations of the several witnesses taken by us the said 'T. and O.' in open court, as such clerk of the Crown and deputy clerk of the Crown as aforesaid, the same having been carefully collated and compared by us the said 'T. and O.," as such officers as aforesaid, with such originals; and that the said examinations are subscribed by the said 'W. H. B.," &c., "respectively." The examinations were not in the handwriting of T. or O.; nor did it appear by whom they had been transcribed.

*Held*, that the parchment writing so returned sufficiently appeared to be such examinations reduced into writing as were required by Stat. 13 G. 3, c. 63 s. 40, and were evidence on the trial of the information. *Regina v. Douglas*, 13 Q. B. 42.

2. *Stay of proceedings*.—The Court discharged so much of an order for a commission to examine witnesses as stayed the proceedings, on the ground of an unreasonable delay in the application. *Butler v. Fox*, 9 C. B. 199.

#### PIRACY OF COPYRIGHT.

*Music.—Previous publication*.—On the trial of an action for piracy of musical copyright, a piece of music having been shown to a witness skilled in music, he was asked, for the purpose of proving that it was not first published in England, whether he had not seen printed copies of it for sale in a shop at Milan at a given date 16 years before the trial: *Held*, that the question was irregular, as referring to the contents of a document not produced or accounted for.

*Held*, also, that a statement by the same witness, that he had heard the music produced in Court sung by persons in private society with printed music before them, as if singing therefrom, was not evidence that the music so printed was the same as the music in Court. *Boosey v. Davidson*, 13 Q. B. 257.

#### PRESCRIPTIVE RIGHT.

*Turbary*.—*User not extending to locus in quo*.—*Trespass quare clausum fregit*. Pleas justifying under a right of common of turbary claimed by prescription, and by enjoyment for 30 and 60 years, over G., whereof the locus in quo was part. Replication, denying the right of common of turbary in the locus in quo. On the trial, it appeared that defendant had enjoyed the right on every part of G. where any fuel had been found; that the locus in quo was part of G.; but that it was a rock on which no fuel ever had been, or in the ordinary course of nature could ever be, found. Verdict for plaintiff.

*Held*, that the inference to be drawn from the user was, that the right extended to all parts of G. fit for the production of fuel, and not to such a spot as the locus in quo; and that the verdict for plaintiff was right. *Pearson v. Underhill*, 16 Q. B. 120.

Case cited in the judgment: *Maxwell v. Martin*, 6 Bing. 522.

#### PROOF OF NOTICE.

*Sent by deceased clerk*.—In an action for railway calls, the plaintiff proved that it was the course of business for C., a clerk, to fill up printed notices of the calls and direct them to the shareholders, and then to put the notices into a basket; and it was the practice for another clerk to post the letters which were in the basket, which he had done on this occasion. C. was dead, but a list of shareholders, containing the name of the defendant, was produced in his handwriting, and indorsed by him, "Letters sent out." C. had received instructions to make out such list, and had been seen filling up; and directing the notices, with such a list before him: *Held*, that the list so indorsed was admissible as evidence that notice of the call had been sent to the defendant, notwithstanding it was not distinctly shown when the indorsement was made. *Eastern Union Railway Company v. Symonds*, 5 Exch. R. 237.

#### STAMP.

1. *Agreement*.—*Acknowledgment of antecedent agreement*.—Assumpsit on a special agreement, whereby plaintiff, for certain considerations, was to pay defendant a sum of money and accept a bill of exchange at 18 months and deliver the same to defendant, the bill to be on certain conditions null and void; and defendant promised that, if he should negotiate the bill, and the conditions should be fulfilled, he would indemnify plaintiff against the bill. Averments, that the bill was deposited on the terms, that the conditions were fulfilled, and the bill became null and void. Breach, that defendant did not indemnify plaintiff. Pleas, *non assumpsit* and a traverse of the averment that the bill was deposited on these terms. On the trial, the plaintiff gave oral evidence which showed that there was an agreement between plaintiff and defendant, but failed in showing its terms. He then pro-

duced a paper signed by defendant, dated after the parol agreement, in these words,—“I have this day received from” plaintiff “a bill for 27*l.* 10*s.*., at 18 months date, on condition that,” if, &c. (stating the conditions in the declaration, but not the rest of the agreement), “the bill to be null and void :” *Held*, that this paper did not require a stamp. *De Porquet v. Page*, 15 Q. B. 1073.

2. *Lease.—Counterpart.*—In debt for rent on an indenture, with a plea of *non est factum*, the plaintiff is entitled to recover, on production of a deed bearing a counterpart stamp, and on proof of its execution by the defendant,—without going on to prove the execution of a lease by himself. *Hughes v. Clark*, 10 C. B. 905.

3. *Allottee of shares.*—In an action for money had and received, by an allottee of railway scrip, for the recovery of his deposit on the abandonment of the scheme, the letter of allotment was offered in evidence by the plaintiff, who called upon the defendant to produce the letter of application, which he refused to do : *Held*, in error on a bill of exceptions, that, under such circumstance, the letter of allotment was receivable in evidence without a stamp, as there was no presumption that the two letters were *ad idem*, and that the contract depended upon them alone.

The deposit was paid into one of the banks mentioned in the prospectus of the company, on account of the company and to their credit, the defendant being a member of the managing and also of the provisional committee; and upon application by the plaintiff for a return of his deposit, he received from the attorney of the company an answer, to the effect that arrangements for that purpose were being made : *Held*, that there was evidence that the money was had and received by the defendant : *Held*, also, that as the evidence in the case did not depend altogether upon written instruments, but upon other matters of fact, it was a question for the jury, and not for the Judge, what was the contract between the parties. *Moore v. Garwood*, 4 Exch. R. 681.

## GUARANTEES.

1. *Fraudulent purpose. — Petition for protecting order.* — Assumpsit on defendant's guarantee for a debt due from S. to plaintiff; the promise alleged being that, if plaintiff would give S. a written acknowledgment that plaintiff had no legal claim on S., defendant would be answerable for the amount; with an averment that plaintiff wrote and sent such acknowledgment to S. Plea, that S. was a trader within the Bankrupt Acts, and a prisoner in execution for debt, owing 300*l.* and upwards, and was desirous of petitioning the Court of Bankruptcy for an interim order of protection under Stat. 7 & 8 Vict. c. 96 s. 6, and, in support of such petition, of falsely representing himself to the

Court as owing less than 300*l.* : and that defendant, at the request of Smith, gave the guarantee above stated, with the intent, on the part of Smith and defendant, that Smith should be the better able falsely to make such representations. Averment, that plaintiff knew the corrupt purpose for which the guarantee was given, and, with such knowledge, accepted it, and assented to write the acknowledgment for the purpose of aiding Smith in making the false representation, &c. Replication, *de injurid.*

*Held*, on proof of the facts pleaded, and that plaintiff's acknowledgment was not a release under seal.

That defendant was entitled to a verdict on the evidence.

And, that plaintiff was not entitled to judgment *non obstante veredicto*. *Coles v. Strick*, 15 Q. B. 2.

2. *Past and present consideration. — Evidence to explain written instrument. — Statute of Frauds.*—Declaration in assumpsit alleged : That L. had requested plaintiff to sell and deliver to him goods in the way of plaintiff's business; and plaintiff had, at L.'s request, consented to do so, provided defendant would guarantee the payment, of which defendant, before the making of the promise after-mentioned, and before L. was indebted to plaintiff for any goods, and when no goods delivered by plaintiff to L. were unpaid for, and no money was due from L. to plaintiff on any account whatever, defendant, by writing addressed to the plaintiff, promised in the words following :—“I hereby guarantee the payment of any sum or sums of money due to you from ‘L.’ the amount not to exceed at any time 100*l.*,” that afterwards plaintiff confiding, &c., supplied goods to L. for reasonable prices amounting to 100*l.*, and thereby allowed L. to become indebted to him in 100*l.*; that L. had not paid : breach, that defendant had not paid.

(On demurrer to the declaration : *Held*,

That the circumstances stated in the declaration might be looked at to explain the meaning of the writing.

That the writing, so explained, showed a good consideration for defendant's promise, namely, the future advances by plaintiff to L., so as to satisfy sect. 4 of the Statute of Frauds, 29 C. 2, s. 3.

And per Lord Campbell, C. J., Coleridge and Wightman, JJ., that this consideration appeared by the writing itself, independently of the other circumstances stated. *Bainbridge v. Wade*, 16 Q. B. 89.

Cases cited in the judgment: *Wain v. Warlters*, 5 East, 10; *Stadt v. Lill*, 9 East, 348; 1 Camp. 242; *Mores v. Ansell*, 5 Wils. 275; *Shortrede v. Cheek*, 1 A. & E. 57; *Brooks v. Haigh*, 10 A. & E. 323; *Goldshede v. Swan*, 1 Exch. R. 154; *Edwards v. Jevons*, 8 C. B. 436.

3. *Construction of future credit.*—“In consideration of E. R. & Co. giving credit to D. J., I hereby engage to be responsible, and to pay

any sum, not exceeding 120*l.*, due to the said *E. R. & Co.*, by the said *D. J.*:" *Held*, to be a good and binding guarantee, the words "giving credit" being equally applicable to *future* as to *past* credit.

In an action upon this guarantee, the declaration stated, that, at the time it was given, *D. J.* was indebted to the plaintiffs in 46*l.* for goods sold, and which sum was then payable; that the plaintiff had sold other goods to *D. J.*, to the amount of 50*l.*, at a credit which had not yet expired; that *D. J.* had applied to the plaintiffs for an extension of credit in respect of both debts, and also for a further supply of goods on credit, which the plaintiffs had consented to do on receiving the defendant's guarantee; that the defendant, in consideration of the premises, gave the plaintiffs the guarantee above set out; and that *D. J.* made default, &c.: *Held*, on special demurrer, that the declaration sufficiently showed that the consideration for the guarantee was *future* credit, and was therefore good. *Edwards v. Jevons*, 8 C. B. 436.

Cases cited in the judgment: *Haigh v. Brooks*, 10 A. & E. 309; 2 P. & D. 477; *Goldshede, v. Swan*, 1 Exch. 154.

4. *Sufficiency of consideration in support.*—*Construction of.*—*Mode of declaring on, where matter of inducement put in issue by non-assumpsit, as forming part of the consideration.*—The defendants gave the plaintiff the following guarantee:—"We, the undersigned, hereby indemnify the National Provincial Banking Company, to the extent of 1,000*l.*, advanced or to be advanced to *R. P.*, by the said company." It appeared that, at the time the guarantee was given, *R. P.* was indebted to the bank in a sum exceeding 1,000*l.*: *Held*, that the guarantee did not, upon the face of it, or construed with reference to the extrinsic circumstances, disclose a sufficient consideration.

A declaration upon the above guarantee, stated, that, at the time of making the agreement, &c., *R. P.* kept an account with the company, and was indebted to them in 300*l.* for money advanced; that it was proposed between *R. P.* and the company, that the company should advance him divers other moneys not then agreed upon; and that thereupon the agreement (setting it out) was entered into; the declaration then proceeded to allege, that, "in consideration of the premises," the parties mutually promised, &c., that the company did advance to *R. P.* divers large sums, amounting to 1,000*l.*, and forbore and gave day of payment to *R. P.*, &c.: *Held*, that the whole of the allegations preceding the mutual promises, formed part of the consideration for the defendant's promise, and were all put in issue by non-assumpsit. *Bell v. Welch*, 9 C. B. 154.

5. *Construction of.*—*And how declared on.*—*A. and Co.* write to *B.*, "We are doing business with *C.*, and we require a guarantee to the amount of 200*l.*, and he refers us to you

for one." *B.* replies, "In reply to yours, I beg to say that I have no objection to become security for *C.*, and subjoin the following memorandum to that effect." The subjoined memorandum was,—“I hereby engage to guarantee to *A. and Co.* the sum of 200*l.*, for us received from them for *C.*, as annexed.”

*Held*, a good consideration to support an assumpsit.

*Semble*, that, if necessary, evidence was admissible to explain the meaning of the words "for iron received."

A declaration upon this guarantee stated, that, in consideration that the plaintiffs, at the request of the defendant, would sell and deliver iron to *C.* on credit, the defendant promised the plaintiffs to guarantee to them the price of the said good to the amount of 200*l.*: *Held*, that the consideration and the promise were well laid. *Colbourn v. Dawson*, 10 C. B. 76*h.*

Cases cited in the judgment: *Butcher v. Stewart*, 11 M. & W. 837; *Goldshede v. Swan*, 1 Exch. R. 154; *Steele v. Hoe*, 19 Law J., N. S., Q. B. 89.

6. *Guarantee by one of several partners in partnership name.*—*Statute of Frauds.*—*Account stated.*—The defendants, who were in partnership as railway contractors, under the name of *W., A., and Co.*, contracted with a railway company to do certain works. *U.* and *R.* made a sub-contract with the defendants to do part of the work; and for that purpose requiring coals to make bricks, *A.*, without the knowledge or assent of his co-partners, signed, in the name of the firm, and delivered to the plaintiffs a guarantee, not addressed to any person, for payment of coals to be supplied to *U.* and *R.* The plaintiffs having pointed out the omission, a clerk of *W., A., and Co.*, by the direction of *A.*, wrote to the plaintiffs, stating that the guarantee was intended for them. The clerk, also, without the knowledge of the other partners, wrote to the plaintiffs certain letters, amounting to evidence of an account stated in respect of the amount due on the guarantee: *Held*, first, that the guarantee and subsequent letter constituted a sufficient notice in writing within the Statute of Frauds.

Secondly, that the guarantee did not bind the firm, there being no evidence that it was necessary for carrying into effect the partnership contract, or that the other partners had adopted it.

Thirdly, that, as the firm was not bound by the guarantees, the letters of the clerk respecting them were not evidence of an account stated as against the other partners. *Brettell v. Williams*, 4 Exch. R. 623.

Cases cited in the judgment: *Duncan v. Lowndes*, 3 Camp. 478; *Haaleham v. Young*, 5 Q. B. 838; *Sandiland v. Marsh*, 2 B. & Ald. 673; *Hawthorne v. Bourne*, 7 M. & W. 595.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, APRIL 9, 1853.  
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## THE LAW OF DIVORCE.

### REPORT OF THE COMMISSIONERS.

IN our last Number, the jurisdiction exercised by the Ecclesiastical Courts generally, and especially in testamentary matters, was referred to. The law of divorce, though in some degree associated with the Ecclesiastical jurisdiction, stands upon distinct grounds, and operates not so much upon the property as upon the social and moral happiness of the community.

The machinery by which the law of divorce is administered is altogether anomalous, but the dissatisfaction its administration creates is not directed solely against the tribunals charged with the determination of questions of this nature: the law itself is impugned by many intelligent and conscientious persons, and the principles upon which it is founded continue to be questioned, discussed, and to some extent condemned.

Our readers hardly need to be reminded, that there are two species of divorce known in this country:—divorce *à mensâ et thoro*, and divorce *à vinculo matrimonii*. The first is obtained by a decree of the Ecclesiastical Courts, and the second only by the direct intervention of the Legislature, by means of a private Act of Parliament. The divorce *à mensâ et thoro* may be obtained, either by the husband or wife, for conjugal infidelity or gross cruelty, but the divorce *à vinculo* is, in general, only granted at the instance of the husband, by reason of adultery, after a verdict at law, and the sentence of an Ecclesiastical Court. The main objection to this state of the law is, that the proceeding necessary to obtain a divorce *à vinculo*, which alone enables the divorced parties to marry again, is attended with so considerable a pecuniary outlay that its be-

nefits are reserved exclusively for the affluent. Practically, no man belonging to the middle or the humbler classes, however blameless may be his own conduct, or however outrageous and unchaste the conduct of his partner, is permitted to contract a second marriage. A secondary and minor grievance arises from the practice of insisting upon a verdict in an action for criminal conversation, and a sentence *à mensâ et thoro*, as preliminary conditions to obtaining an act of divorce.

The whole question, as our readers were long since informed, was referred, under a Royal Commission, to Lords Campbell, Beaumont, and Redesdale, Sir Stephen Lushington (the Judge of the Admiralty and Consistory Courts), Mr. Spenser Walpole (late Secretary for the Home Department), Sir William Page Wood (one of the Vice-Chancellors), and Mr. Edward Pleydell Bouverie. The Commissioners took some time to prepare their report, but not longer than might have been expected from the gravity and importance of the subject referred to them, and shortly after the re-assembling of Parliament, that report was laid upon the table of both Houses. The suggestions made by the Commissioners for improving the law and practice have already been submitted to our readers (see *ante*, p. 416), and, as we collect, the report was concurred in by all the Commissioners, with the exception of Lord Redesdale, who, in a separate paper, has stated the grounds of his partial dissent from the conclusions at which his brother Commissioners arrived. Upon the subject of divorce *à mensâ et thoro*, entire unanimity appears to have prevailed. The Commissioners all agreed in thinking that this species of divorce should continue to be granted upon the same grounds as at present, that is to say:—for conjugal infidelity, gross cruelty,

by one or more of the parties not contracting a second marriage, which renders the divorce, so far as they are concerned, in fact unnecessary."

In the able and well drawn paper in which Lord Redesdale has thus propounded his peculiar views, he seems to have given too little weight to—if not altogether to have overlooked—the important consideration, that for a period of 150 years the legislature has gone on granting divorces *à vinculo*, though in a mode and by a machinery universally allowed to be objectionable. The Lords and Commons have followed in the steps of the early reformers, it may be, as Lord Redesdale suggests, “because of the hardness of men’s hearts,” but, at all events, the passing of divorce bills is an established practice, and no law that could be passed by the existing Legislature would be binding upon their successors, so far as to prevent them from interposing in cases of supposed hardship to dissolve a contract which the gross profligacy of one of the parties made it downright cruelty to enforce against the other. His lordship, however, has pointed out some difficulties of a practical nature in the proposed scheme, which are eminently entitled to consideration, and to which it is desirable that all who take an interest in this important subject should direct their attention. The difficulties referred to are stated in the following passages:—

"I have another objection to the proposed alteration, from a conviction that it will extend much further than those who recommend it in their report intend or consider expedient. By the proposed change, divorce *à vinculo* is no longer to be considered as an exceptional law, but is to be made a common legal remedy. Viewing the subject in this light, they desire that such remedy should be limited by the rules which at present govern the exceptional cases, to which it has been hitherto applied. To secure this, the provisions of the Act of Parliament by which the change is to be effected, ought to be clear and definite. No attempt has been made to frame such a measure, and I believe that whenever it is attempted, the result will be unsatisfactory. It appears to me that any Court to which the determination of such cases would be referred, must be placed in a totally different position from that in which Parliament now stands in reference to these cases. The application at present is, to have an exceptional law passed, and the discretion, consequently, which can be exercised by Parliament, is great. No Judge can feel himself in the enjoyment of the same liberty in administering the existing law, as he may in recommending or refusing a special relief from its provisions. I believe it will be

generally admitted that a divorce *à mens et thoro* may be granted in cases in which a divorce *à vinculo* ought to be refused. The practice of any existing Court, therefore, can only be imperfectly adopted as a guide for this new tribunal; and unless a discretion similar to that now exercised by Parliament can be transferred to it, which I believe every lawyer would feel himself practically debarred from exercising under the altered circumstances, or unless words can be devised to express in an enactment exactly that which the Commissioners desire to secure, which I believe to be equally impossible, divorces *à vinculo* will in future be granted in cases which would now have no chance of success, and to which the Commissioners do not desire to extend it.

"My apprehensions of evil consequences, however, extend still further. I consider the tribunal recommended by the Commissioners for determining these questions a very good one, but proceedings before it in cases of divorce *à vinculo*, will necessarily be attended with some expense, though far below that which is now required. These divorces will thus be opened to another and numerous class, but a still more numerous class will be equally excluded as at present. Once create an appetite for such licence by the proposed change, and the demand to be permitted to satisfy it will be irresistible. The cry for cheap law has of late been universally attended to, and the result will too probably be, that these delicate and important questions will be brought before inferior tribunals, where the number of the Judges (each acting separately) will render anything like uniformity of decision upon the circumstances which are to rule in refusing applications impossible, and must ultimately lead to extreme facility in obtaining such divorces."

It may be hoped that the ingenuity of the Commissioners, and the wisdom and discretion of the Government upon whose responsibility the proposed measure is to be introduced, will be adequate to deal with and prevent some of the difficulties which Lord Redesdale has so forcibly pointed out. The expense of the system of procedure to be adopted by the Court of Divorce about to be established, must be so moderate as not practically to exclude all but the wealthy. Still, it must be borne in mind, that in general no tribunal can be resorted to, for the purpose of obtaining redress for injury or enforcing a civil right, without some outlay, which may close the door against those in very impoverished circumstances. We cannot suppose, however, that the Legislature will ever be induced, as his lordship contemplates may hereafter occur, to transfer the determination of divorce cases to the County Courts. We are not ignorant that it has already been

proposed, but it seems hardly possible to conceive any scheme more objectionable, more injurious to the morals of the community, or more destructive to the utility of the County Courts.

## THE SECOND READING OF THE ATTORNEYS' CERTIFICATE BILL.

THE financial statement of the Chancellor of the Exchequer will be made on Monday, the 18th instant. The second reading of the Bill for the repeal of the Certificate Tax stands for Wednesday the 27th. So that there is ample time for all the necessary arrangements. We are informed that a hundred more petitions have arrived from divers cities and towns, in readiness to be presented, and that every post brings a considerable number. The Government has not yet intimated any intention of withdrawing their opposition, and the Profession must therefore continue their exertions to impress the members of the Legislature who represent them with the justice of their claims.

The Incorporated Law Society, as the great agents for the Bill, will doubtless give due notice to all the supporters of the measure, of the day for the second reading. But every individual solicitor should either personally see or write to his friends in the House, and induce them to attend.

It appears that the present Chancellor of the Exchequer must have been misinformed by the official persons of whom, we presume, he inquired into the state of the case,—for his two suggestions of reducing the duty on articles of clerkship and equalising the tax on town and country solicitors were quite wide of any reasonable or satisfactory adjustment of the question. There may be some truth in the statement that the railway rapidity of communication with the metropolis, and the establishment of County Courts, have effected a great change in the relative position of town and country practitioners, and therefore that the difference between 12*l.* and 8*l.* should not continue; but the whole tax is a monstrous injustice, and it would be a pitiful affair merely to reduce the London certificates to the level of the country, or to equalise the tax by reducing the one and increasing the other in order to raise the same amount. It is difficult to conjecture how a man of the talent of Mr. Gladstone could be deceived into an opinion that either of these modifications would be acceptable.

We apprehend that the aggrieved parties must pursue the course adopted with the "unjust judge," until he yields to their importunity. It is indeed marvellous that no minister will take the pains to investigate the case, as Lord Robert Grosvenor has done, and satisfy himself of the rectitude of the claim, and concede it in a gracious spirit. Every public man must know that to uphold the respectability, and to do justice to the practitioners in the Law, is highly important to the welfare of the community. The tax rests on no principle, either of equality or justice. After six divisions in favour of its repeal, the minister would be fully justified in including the remission of this impost in his financial scheme.

### ATTORNEYS' AND SOLICITORS' CERTIFICATE BILL.

WE deem it useful to place before our readers a *verbatim* copy of this Bill, which was prepared and brought in by Lord Robert Grosvenor and Sir Frederick Thesiger; and was ordered to be printed by the House of Commons. It is as follows:—

(16 MARCH, 1853.—16 VICT.)

A BILL to Repeal the Annual Certificate Duty payable by Attorneys, Solicitors, Proctors, Writers to the Signet, and Notaries, and to amend the Law relating to the Registration of Attorneys and Solicitors.

*Preamble.*—55 Geo. 3, c. 184.—5 & 6 Vict. c. 82.—Whereas under or by virtue of an Act passed in the 55 Geo. 3, intituled "An Act for repealing the Stamp Duties on Deeds, Law Proceedings, and other written or printed Instruments, and the duties on Fire Insurances, and on Legacies, and Successions to Personal Estate upon Intestacies, now payable in Great Britain, and for granting other Duties in lieu thereof," and by an Act passed in the 5 & 6 Vict., intituled "An Act to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same," certain stamp duties specified and contained in the Schedules to the said Acts annexed were granted and made payable in Great Britain and Ireland for or in respect of (amongst other things) certificates to be taken out yearly by every person admitted as an attorney or solicitor in any of his Majesty's Courts at Westminster and Dublin, or in any of the Courts of the Great Sessions in Wales, or of the Counties Palatine of Chester, Lancaster, and Durham, or in any other Court in England and Ireland holding pleas where the debt or damage amounts to

40s., and by every person admitted as a proctor in any of the Ecclesiastical or Admiralty Courts in England and Ireland, and by every person admitted as a writer to the signet, or as a solicitor, agent, attorney, or procurator, in any of the Courts in Scotland, and by every person admitted or enrolled as a notary public in England, Scotland, or Ireland: And whereas it is expedient that the said duties in respect of such certificates should be repealed: Be it therefore enacted,—

1. *Duties on annual certificates to be taken out by attorneys, solicitors, proctors, &c., repealed.*—That from and after the 31st day of October, 1853, the duties aforesaid payable in Scotland, and from and after the 15th day of November, 1853, the duties aforesaid payable in England, and from and after the 6th day of January, 1854, the duties aforesaid payable in Ireland, shall cease and be no longer paid or payable: Provided always, that such of the said duties as shall at such respective times have accrued or have become payable or due shall be recoverable by the same ways or means, and with such and the same penalties, as if this Act had not passed.

2. *Every attorney and solicitor to take out annually, between the 15th November and the 16th December, a certificate to entitle him to practise.*—Every person who has been or shall be admitted or enrolled as an attorney or solicitor in any Court of Law or Equity in England or Wales shall annually, between the 15th day of November and the 16th day of December, during such time as he shall continue to practise as an attorney or solicitor, or before he shall act as an attorney or solicitor, or as such attorney or solicitor shall sue out any writ or process, or commence, carry on, solicit, or defend any action, suit, or other proceeding in the name of any other person, or in his own name, in her Majesty's High Court of Chancery, or Courts of Queen's Bench, Common Pleas, or Exchequer, or Court of the Duchy of Lancaster, or Court of the Duchy Chamber of Lancaster at Westminster, or in any of the Courts of the Counties Palatine of Lancaster and Durham, or in any Court of Bankruptcy, or in any Court for the Relief of Insolvent Debtors, or in any County Court, or in any Court of Civil or Criminal Jurisdiction, or in any other Court of Law or Equity, in that part of the United Kingdom of Great Britain and Ireland called England and Wales, or act as an attorney or solicitor in any cause, matter, or suit, civil or criminal, to be heard, tried, or determined in either of the Houses of Parliament, or before any justice of assize of oyer and terminer or gaol delivery, or at any general or quarter sessions of the peace for any county, riding, division, liberty, city, borough, or place, or before any justice or justices, or before any Commissioners of her Majesty's Revenue, obtain from the Registrar of Attorneys and Solicitors a certificate of his being duly enrolled as an attorney or solicitor.

3. *When such certificate shall bear date and when determine.*—Every certificate issued by

virtue of this Act between the 15th day of November and the 16th day of December in every year shall bear date on the 16th day of November in such year, and every certificate issued at any other time shall bear date on the day on which the same shall be issued; and every such certificate shall cease and determine on the 15th day of November then next following.

4. *Registrar of Attorneys and Solicitors to keep a roll.*—6 & 7 Vict. c. 73.—From and after the said 15th day of November, 1853, there shall be a Registrar of Attorneys and Solicitors admitted or enrolled in any such Court of Law or Equity in England or Wales, and it shall be the duty of such Registrar to keep an alphabetical roll or book, or rolls or books, of all attorneys and solicitors, and to issue to persons who have been admitted and enrolled as attorneys or solicitors certificates entitling them to practise as such; and it shall and may be lawful to and for the Lord Chief Justice of her Majesty's Court of Queen's Bench, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer (or any three of them, of whom the Master of the Rolls shall be one), to make such orders, directions, and regulations touching the performance and execution of the duties aforesaid as they shall think proper; and such registrar, or some person duly appointed by him, shall have free access to, and shall be at liberty from time to time to examine and take copies or extracts, without fee or reward, of all rolls or books kept for the enrolment of attorneys and solicitors in any of the Courts at Westminster, and for the enrolment of attorneys and solicitors in the Court of the Duchy of Lancaster, or Court of the Duchy Chamber of Lancaster at Westminster, or in any Courts of the Counties Palatine of Lancaster and Durham; and the duties of such office of Registrar shall be performed as in the manner provided and directed by an Act passed in the Session of Parliament held in the 6 & 7 Vict., intituled "An Act for consolidating and amending several of the Laws relating to Attorneys and Solicitors practising in England and Wales," by the "Incorporated Society of Attorneys, Solicitors, Proctors, and others, not being Barristers, practising in the Courts of Law and Equity of the United Kingdom," whether by their present or any future charter of incorporation, unless and until the Lord Chief Justice of the Court of Queen's Bench, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer (or any three of them of whom the Master of the Rolls shall be one), shall by any order under their hands, which order they are hereby authorised and empowered to make, appoint any fit and proper person to perform the said duties in the place and stead of the said Society, which said person shall be called the Registrar of Attorneys and Solicitors, and shall hold such office or employment during

pleasure only, and so from time to time to appoint any other fit and proper person, or the said Society, to perform the said duties during pleasure.

5. *On application for certificate, a declaration to be signed and entered in a book.*—For the purpose of obtaining such Registrar's certificate as aforesaid, a declaration in writing, signed by such attorney or solicitor or by his partner, or in case such attorney or solicitor shall reside more than 20 miles from London, then by his London agent on his behalf, containing his name and place of residence, and the Court or one of the Courts of which he is then admitted an attorney or solicitor, together with the term and year in or as of which he was so admitted shall be delivered to the said Registrar, who shall cause all the particulars in such declaration to be entered in a proper book to be kept for that purpose, which shall be open to the inspection and examination of all persons without fee or reward; and the said Registrar shall, after the expiration of six days after the delivery of such declaration (unless he shall see cause and have reason to believe that the party applying for such certificate is not upon the said Roll of Attorneys or Solicitors), deliver to the said attorney or solicitor or to his agent, on demand, and upon payment to the said Registrar, for the use of the said Society, of the sum of a certificate in the form or to the effect set forth in the Schedule to this Act annexed.

6. *On Registrar's refusal, application to be made to Court.*—In case the said Registrar shall decline to issue such certificate as he is hereinbefore directed and required to give, the party so applying for the same, if an attorney, shall and may apply to any of the said Courts of Law at Westminster, or to any Judge thereof, or, if a solicitor, to the Master of the Rolls, who are hereby respectively authorised to make such order in the matter as shall be just, and to order payment of costs by and to either of the parties, if they shall see fit.

7. *In case of neglect to obtain a certificate, application to be made to the Court or Judge.*—If any attorney or solicitor in England or Wales shall neglect for one whole year to procure an annual certificate authorising him to practise as such, then and in such case the said Registrar shall not afterwards grant a certificate to such attorney or solicitor without the order of the Master of the Rolls, in the case of a solicitor, or of one of the Courts of Queen's Bench, Common Pleas or Exchequer, or of one of the Judges thereof, in the case of an attorney, authorising such Registrar to issue such certificate; and it shall be lawful for the Master of the Rolls, or for such Court or Judge, to make such order, upon such terms and conditions as he or they shall think fit.

8. *Penalty for acting without a certificate, or giving false place of residence.*—Every person admitted or enrolled as an attorney or solicitor in any Court of Law or Equity in England or Wales who shall, in his own name or in the



name of any other person, sue out any writ or process, or commence, carry on, solicit, or defend any action, suit, or other proceeding, in any of the Courts aforesaid, or shall in any manner act as an attorney or solicitor, without having previously obtained a certificate as aforesaid which shall be then in force, or who shall deliver to the officer appointed by this Act any false or fictitious name or place of residence, contrary to the true intent and meaning of this Act, shall for every such offence forfeit and pay the sum of *pounds*, to be recovered, with full costs of suit, by action of debt, bill, plaint, suit, or information in any of her Majesty's Courts of Record at Westminster, wherein no protection nor more than one imparance shall be allowed, by and in the name of the Society of Attorneys, Solicitors, Proctors, and others, not being barristers, practising in the Courts of Law and Equity of the United Kingdom, and to be appropriated and disposed of by such Society in such manner as they shall deem most expedient; and every such person as aforesaid shall be incapable of maintaining any action or suit in any Court of Law or Equity for the recovery of any fee, reward, or disbursement on account of prosecuting, carrying on, or defending any such action, suit, or proceeding, or for or in respect of any business, act, matter, or thing done by him as an attorney or solicitor, whilst he shall have been without such certificate as aforesaid.

9. *Certificate under this Act equivalent to a stamped certificate.*—All acts which by any law now in force are required to be done by an attorney or solicitor having obtained a stamped certificate shall be valid and effectual if done by an attorney or solicitor having obtained a certificate under this Act; and that the obtaining of a certificate under the provisions of this Act by any attorney or solicitor shall be and be deemed to be a compliance with the provisions of any law now in force requiring such attorney or solicitor to take out or obtain a stamped certificate.

#### THE SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

##### *Form of Registrar's Certificate.*

No.

18 .

Pursuant to an Act passed in the Session of Parliament held in the *and* years in the reign of Queen Victoria, intituled "An Act to repeal the Annual Certificate Duty payable by Attorneys, Solicitors, Proctors, Writers to the Signet, and Notaries, and to amend the Law relating to the Registration of Attorneys and Solicitors," I, *A. B.*, Registrar of Attorneys and Solicitors appointed under the said Act, [or *I. C. D.*, Secretary of the Society of Attorneys, Solicitors, Proctors, and others, not being Barristers, practising in the Courts of Law and Equity of the United Kingdom, authorised to perform the duties of the office of Registrar of Attorneys and Solicitors under

the said Act,] do hereby certify, That *E. F.* of *hath* this day delivered and left with me a declaration in writing, signed by the said *E. F.*, [or by *G. H.*, his partner, or by *I. K.*, his London agent, on his behalf,] containing his name and place of residence, and the Court or one of the Courts of which he is admitted an attorney or solicitor, together with the Term and the year in or as of which he was so admitted. And I do further certify, that the said *E. F.* is duly enrolled an attorney in the Court of *and* a solicitor in the High Court of Chancery, and is entitled to practise as an attorney and solicitor.

In witness thereof, I have this *day* of *in* the year 18 *set* my hand hereunto.

#### NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

##### COMMONS INCLOSURE, No. 2.

16 VICT. c. 11.

An Act to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales. [18th March, 1853.]

Whereas the Inclosure Commissioners for England and Wales have, in pursuance of "The Acts for the Inclosure, Exchange, and Improvement of Land," issued their provisional orders for and concerning the proposed inclosures mentioned in the Schedule to this Act, and have in their Eighth Annual General Report certified their opinion that such inclosures would be expedient; but the same cannot be proceeded with without the previous authority of Parliament: Be it enacted as follow:—

1. That the said several proposed inclosures mentioned in the Schedule to this Act be proceeded with.

2. And be it enacted, That in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use either the expression "The Annual Inclosure Act, 1853," or "The Acts for the Inclosure, Exchange, and Improvement of Land."

#### SCHEDULE TO WHICH THIS ACT REFERS.

Inclosure.	County.	Date of Provisional Order.
Tatham . . .	Lancaster . . .	9th Dec. 1852.
Lynby Wigbay .	Nottingham . .	4th June, 1852.
High Callerton .	Northumberland	2nd Nov. 1852.
Ifield . . .	Sussex . . .	23rd Nov. 1852.
Kentmere . . .	Westmoreland .	5th Jan. 1853.
Norton Common	Southampton .	21st Jan. 1853.
Prestwick Carr .	Northumberland	5th Jan. 1853.

## REGISTRATION OF ASSURANCES.

which the original document will be returned to the party.

The new clause is as follows :—

## POWER TO REGISTER COPIES, ON EXAMINATION WITH ORIGINAL DEEDS.

THE Bill before the Select Committee of the House of Lords contains an alteration from the previous Bill which it may be useful to notice. The former Bill gave the option to the owner of retaining his original deed and registering a *duplicate*. The present Bill enables him to register either a duplicate or a *copy* of the original deed. This will save the expense of the stamp on the duplicate, but the copy to be deposited and bound up in the Register should be written on parchment, and the expense of ingrossing will therefore be the same. This, like the former plan, is evidently intended to gratify the natural desire of the owner of an estate to keep the original deeds in his own possession.

The 8th clause of the last Bill as amended in Committee (and printed 16th June, 1851), was as follows :—

"All assurances to be executed after the commencement of registration under this Act, by which any lands in England may be effected at Law or in Equity, may be registered under this Act by the deposit of [the original document, or (where there are duplicate original documents) of one of the duplicate original documents] in the Register Office, and by the entry or entries hereinafter required being made in the proper index or indexes to be kept under this Act in such office, and the several documents to be deposited in such office shall from time to time be made up into books or parcels, and numbered and arranged in such manner as the Registrar may direct."

The words in brackets are omitted in the 8th clause of the present Bill (printed 14th Feb., 1853), and the following provision substituted,—by the deposit of "the *proper* [instead of *original*] document; and, save where herein otherwise provided, the document to be deposited in the said office on the registration of any assurance, shall be the original assurance, or duplicate thereof, or such copy of the assurance as hereinafter mentioned."

The copy thus referred to will be found described in the 21st clause, which provides that copies may be deposited for registration,—such copies being made or examined in the Register Office, or copies furnished by the parties and examined with the original, and the copy and original are to be marked with the office seal,—after

"21. Where, upon the registration of an assurance or will, a copy of such assurance or will, or of any other writing, is deposited, such copy, save where herein otherwise provided, may, at the option of the party requiring registration, be a copy examined in the Register Office, or a copy not so examined; and where the party requiring registration requires the deposit of a copy examined in the Register Office, he shall leave in the office the original assurance, will, or writing, with or without a copy thereof; and if no copy be left with the original, a copy thereof shall be made in the Register Office, and the copy so left or made, as the case may be, shall be examined with the original by some officer of the Register Office, and shall be impressed on each sheet thereof with the seal of the said office, and shall have a certificate written at the head or in the margin thereof, or endorsed thereon, signed by the proper officer of the Register Office, stating that the same is an examined copy of an original document produced at the said office (and such copy is herein referred to as an authenticated copy); and the seal of the Register Office shall also be impressed on each skin or sheet of the original document with which the authenticated copy has been examined; and a certificate signed by such officer shall be written at the head or in the margin of such original document, or indorsed thereon, which certificate shall contain a statement that an authenticated copy of such document has been deposited in the Register Office, and shall state the parties by whom at the time of the deposit of such copy the original document appeared to have been executed, and shall specify the book or parcel in which such copy is made up, and the number of such copy in such book or parcel; and such original document shall be returned to the party by whom the same was left at the office; and every document so sealed, with such certificate thereon, containing such statement, and purporting to be so signed as aforesaid, shall in all cases be evidence that a true copy of the same has been deposited in the Register Office, and is made up in the book or parcel mentioned in such certificate, and is numbered in the said book or parcel as in such certificate is specified; but where the party requires registration by deposit of a copy not authenticated in the Register Office, the officer of the Register Office shall (subject to any regulations which may prescribe the form and manner in which copies to be deposited shall be written) receive any copy brought in by such party for that purpose, and such copy is herein referred to as an authenticated copy."

## NOTICES OF NEW BOOKS.

*The Code of Practice of the High Court of Chancery.* By THOMAS KENNEDY, a Solicitor of the Court. Vol. II. Part II., containing *The General Orders* from 7th August, 1852, to March, 1853; *Forms*, Alphabetical Table of *Fees* payable by Stamps, and a copious *Index* to the whole Volume. London: Butterworths. 1853.

SAVING and excepting the proposed New Orders for the amendment of the present defective system of taxing solicitors' costs,—and which amendments are essential to the due working of the late changes in the Law and Practice in Chancery,—we trust there will not, for some time at least, be any further important alterations. The practitioners, therefore, may now select from the various books which have been published, on the several New Acts and Orders in Chancery, such as may be deemed most useful in their respective offices. On former occasions, we noticed some of these publications, and shall proceed without delay to consider the rest.

For the present, we have to call attention to the New Part of Mr. Kennedy's Second Volume of his Code of Chancery Practice. In our last Volume, p. 379, we noticed the first Part of the Volume, containing all the New Acts and Orders of Court down to the 7th August, 1852, with explanatory Notes and Commentaries. The concluding Part now published comprises all the General Orders from 7th August, 1852, to March, 1853, with all the necessary Forms, an Alphabetical Table of the Fees payable by Stamps, and a copious Index to the whole Volume.

To show the way in which Mr. Kennedy has executed his task, and to give an example of the valuable information and practical notes with which the work abounds, we shall extract the following:—

As to the *business at the Judges' Chambers*, under the Orders of 16th October, 1852, Mr. Kennedy observes, on the 1st section, that—

“Although these Orders in terms apply only to the proceedings at the Judges' Chambers, they must be applied, as far as practicable, to the proceedings in the Masters' Offices, in compliance with the terms of the 39th section of the 15 & 16 Vict. c. 80 (vol. 2, p. 122), which provides ‘that the Masters shall, with reference to the proceedings before them, adopt all such rules and regulations and conduct the business

of their respective offices as nearly as may be in the manner in which similar business shall be conducted by the Master of the Rolls and the Vice-Chancellors, except that the Master, instead of communicating directly with the Judge, is to report shortly the result of his inquiries to the Court.’ If the summons be for the purpose of proceedings *not* originating at Chambers, it must be on a 3s. stamp (Order 1 of 23rd Oct., 1852, *infra*, p. , and Schedule, part I., to Orders of 25th October, 1852, *infra*, p. 284). A copy on plain paper must be left with the Judge's clerk when he stamps it (see the 3rd of these Orders); and it must be served *two* clear days before the return, in like manner as a notice of motion (as to which see the 5th of these Orders and note thereon). Any affidavit in support should be filed on the day the summons is served, and a notice of the intention to use them served with a copy of the summons (see the 24th of these Orders, *infra*, p. 261). The party making the application should also be prepared to furnish copies of such affidavits immediately on request, to avoid an adjournment for the purpose of answering them. If the summons be for the purpose of proceedings *originating* at Chambers there must be an original summons with a 5s. stamp, a duplicate with two 5s. stamps, a copy for every party to be served, with a 5s. stamp on each copy, besides a copy on plain paper to be left at the Judge's Chambers. The duplicate in such case must be filed at the Record and Writ Office, and each copy for service stamped at that office. The copies so stamped must be served *seven* clear days before the return (as to which see the 5th of these Orders and note thereon). No provision has been made as to the time when affidavits are to be filed in support of the application; but they should be filed without delay, and notice given of the intention to use them as above suggested with reference to summonses for the purpose of proceedings *not* originating at Chambers. In cases where it is wished that the summons should have the effect of a *lis pendens*, it should be registered with the Senior Master of the Court of Common Pleas, under the 2 & 3 Vict. c. 11 (see sect. 46 of the 15 & 16 Vict. c. 86, vol. ii. p. 163). Where a summons *originating* at Chambers is taken out in the name of an infant or other party under disability, the written authority required by the 11th section of the 15 & 16 Vict. c. 86 (vol. ii. p. 137) to be signed by the next friend, should be obtained in like manner as upon filing a bill, and it must be produced to the Judge's junior clerk on issuing the summons, and filed at the Record and Writ Clerks' Office with the duplicate. The matters which will be taken at Chambers are specified in a notice, dated 10th November, 1852, put up at the Chambers of the Judges (see this notice, *infra*, p. 314, and notes thereon.)”

On the 5th section of the same Orders of 16th October, 1852, relating to the *service of summonses* on proceedings origi-

nating in Chambers, Mr. Kennedy remarks that—

"The original summons referred to in the first part of this Order, that is to say, the *first* summons issued in applications *originating* at Chambers, which is partly in the nature of process to compel appearance, should be served in the same manner as a writ of subpoena to appear and answer under the former practice. It should be observed that, as the words 'clear days' are used in the Order, it will be necessary to compute the time differently from the rules laid down by the 11th and 13th Orders of 8th May, 1845 (vol. i. pp. 322, 323), by which the first day was excluded and the last day included in the computation, Sunday, or any other day when the offices were closed, being excluded *only* when the time expired on such days. There is not any General Order defining the words 'clear days,' but the practice is well understood upon the subject. The same words are used in the 22nd and 23rd Orders of 3rd April, 1828 (vol. 1, p. 191), with reference to the service of notices of motion, petition, and orders *nisi* for dissolving the common injunction, and in the 20th Order of 21st December, 1833 (vol. i. p. 221), with reference to the service of warrants for time, &c., under the 3 & 4 Wm. 4, c. 94, s. 13, in which case the day of the service and of the return, as well as Sundays, were always excluded. The time for serving notices of motion and petitions was further regulated by the 47th article of the 16th Order of 8th May, 1845 (vol. i. p. 338), which article expressly directs that 'Sunday and other days on which the offices are closed, except Monday and Tuesday in Easter week, are not to be reckoned.' When the summons is returnable on a Monday or Tuesday, it will be necessary in serving it to allow for two intervening Sundays, so that in such case the service must be effected ten days at least before the return, viz., on the Thursday week before the return day, when it is returnable on the Monday, and on the Friday week previous to the return day, when it is returnable on a Tuesday, and when the summons is returnable on any other day in the week, then nine days at least before the return; and as the course of proceeding upon these summonses is to be assimilated to the practice upon motions (see the 23rd of these Orders, vol. ii. p. 259), other days when the offices are closed, except Monday and Tuesday in Easter week, must, it is presumed, be taken into account. Those days are Sundays, Good Fridays, Monday and Tuesday in Easter week, Christmas-day, and days appointed by proclamation to be observed as days of general fast and thanksgiving, and such other days as the Lord Chancellor may from time to time by special Order direct (see the 5th Order of 8th May, 1845, vol. i. p. 321, and the 10th of the same Orders, vol. i. p. 322).

Again, under the head of *Claimants coming in under Advertisement*, on the

36th section, we have the following note:—

"There will not in future be any warrant on leaving claims, but the affidavit when sworn must be filed at the Record and Writ Clerks' Office, and an entry made in the Judge's Appointment Book as directed by this Order, and notice given. The office copies of these affidavits and notices should be carefully numbered and arranged, as the party prosecuting the Order in the suit will be required under the 37th of these Orders to produce such office copies at the hearing of the claims; and under the 42nd of these Orders (*infra*, p. 270) he may be directed by the Judge to furnish a list of claims, which see and note thereon. The affidavit may be sworn before the Judge's clerk, being for the purpose of proceedings directed to be taken before him, (see 15 & 16 Vict. c. 80, s. 30, vol. ii. p. 117); and in such case the affidavit will not require any stamp for the oath, there not being any fee directed to be taken for it by the Orders of 25th October, 1852, Schedule, part 2, vol. ii. p. 304; but he will not administer the oath, except in cases where there is a proper reason for his so doing. The solicitor will be entitled to a fee of *6s. 8d.* for filing the affidavit and making the entry. (See the 5th Order of the 23rd October, 1852, *infra*, p. 286). It is presumed that he will be also entitled to the usual fee of *2s. 6d.* for each notice to the solicitors in the cause. An office copy should not be taken."

The Index to the Volume, which occupies no less than a hundred pages, is of great practical value: it forms an analysis of the new practice, and, amongst other advantages, furnishes a complete *Time Table* of proceedings in Chancery.<sup>1</sup>

## NEW RULES OF PLEADING IN THE COMMON LAW COURTS,

SUBMITTED TO THE HOUSES OF PARLIAMENT, AND TO COME INTO OPERATION IN TRINITY TERM.

*Hilary Term, 1853.*

WHEREAS, pursuant to the provisions of the Statute passed in the Session of Parliament held in the 3 & 4 Wm. 4, intitled "An Act for the further Amendment of the Law and the better Advancement of Justice," the Judges of the Superior Courts of Common Law at Westminster made certain rules, orders, and regulations as to the mode of *pleading* and other matters in the said Act mentioned, which said rules, orders, and regulations were duly laid before both Houses of Parliament, as required by that Statute, and came into effect and operation respectively on the first day of Easter Term, in the year of our Lord, 1834, and the first day of Michaelmas Term, in the year of our Lord 1838:

<sup>1</sup> This useful Table, with some further remarks, we must defer to the next Number.

And whereas it is provided by the "Common Law Procedure Act, 1852," that it should be lawful for the Judges of the Courts of Common Law at Westminster, or any eight or more of them, of whom the chiefs of each of the said Courts should be three, from time to time to make all such general rules and orders for the effectual execution of that Act, and of the intention and object thereof, and for fixing the costs to be allowed for and in respect of the matters therein contained, and the performance thereof, and for apportioning the costs of issues, and for other purposes mentioned in the said Act, as in their judgment should be necessary or proper; and to exercise all the powers and authority given to them by an Act of Parliament passed in the Session of Parliament held in the 13 & 14 Vict. intituled "An Act to enable the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading," with respect to any matter therein contained relative to practice or pleading; and the provisions of the said last-mentioned Act, as to the rules, orders, or regulations made in pursuance thereof, should be held applicable to any rules, orders, or regulations which should be made in pursuance of the said Common Law Procedure Act, 1852:

And whereas by the said Act passed in the Session of Parliament held in the 13 & 14 Vict. powers were given to the Judges of the Courts of Common Law at Westminster, by rules and orders, to make alterations in the forms of *pleading* in the said Courts, and respecting other matters in that Act mentioned; and it was enacted, that all such rules, orders, or regulations should be laid before both Houses of Parliament in manner directed by the said Act; and that no such rule, order, or regulation should have effect until three months after the same should have been so laid before both Houses of Parliament; and that any rule, order or regulation so made should from and after such time aforesaid be binding and obligatory on the said Courts, and all other Courts of Common Law, and on all Courts of Error, and be of like force and effect as if the provisions contained therein had been expressly enacted by Parliament:

And whereas it is expedient, for the effectual execution of the said "Common Law Procedure Act, 1852," that the said rules, orders, and regulations respectively made in pursuance of the said Statute passed in the Session of Parliament held in the 3 & 4 Wm. 4, should be repealed, and that other rules, orders, and regulations should be framed in lieu thereof:

It is therefore ordered, that from and after the first day of Trinity Term next inclusive, unless Parliament shall in the meantime otherwise enact, the said rules, orders, and regulations made respectively in pursuance of the said Statute passed in the Session of Parliament held in the 3 & 4 Wm. 4, shall be and are hereby repealed, excepting so far as the same or any of them are necessary or appli-

cable to any pleadings, proceedings, or other matters to which they relate, had or taken previous to the said first day of Trinity Term next; and the following rules, orders, and regulations shall be in force; that is to say:—

1. Except as hereinafter provided, several counts on the same cause of action shall not be allowed, and any count or counts used in violation of this rule may, on the application of the party objecting, within reasonable time, or before an order made for time to plead, be struck out or amended by the Court or a Judge, on such terms, as to costs or otherwise, as such Court or Judge may think fit.

2. Several pleas, replications, or subsequent pleadings, or several avowries or cognizances founded on the same ground of answer or defence, shall not be allowed; provided, that on an application to the Court or a Judge to strike out any count, or on an objection taken before the Judge on a summons to plead several matters to the allowance of several pleas, replications, or subsequent pleadings, avowries, or cognizances on the ground of such counts or other pleadings being in violation of this rule, the Court or the Judge may allow such counts on the same cause of action, or such pleas, replications, or subsequent pleadings, or such avowries or cognizances founded on the same ground of answer or defence, as may appear to such Court or Judge to be proper for the determining the real question in controversy between the parties on its merits, subject to such terms, as to costs and otherwise, as the Court or Judge may think fit.

3. When no such rule or order has been made as to costs by the Court or Judge, and on the trial there is more than one count, plea, replication, or subsequent pleading, avowry, or cognizance on the record, founded on the same cause of action or ground of answer or defence, and the Judge or presiding officer before whom the cause is tried shall at the trial certify to that effect on the record, the party so pleading shall be liable to the opposite party for all costs occasioned by such count, plea, or other pleading in respect of which he has failed to establish a distinct cause of action or distinct ground of answer or defence, including those of the evidence as well as those of the pleading.

4. The name of a county shall in all cases be stated in the margin of a declaration, and shall be taken to be the venue intended by the plaintiff, and no venue shall be stated in the body of the declaration, or in any subsequent pleading.

Provided, that, in cases where local description is now required, such local description shall be given.

5. In all actions by and against assignees of a bankrupt or insolvent, or executors or administrators, or persons authorised by Act of Parliament to sue or be sued as nominal parties, the character in which the plaintiff or defendant is stated on the record to sue or be sued shall not in any case be considered as in issue, unless specially denied.

6. In all actions on simple contract, except as hereinafter excepted, the plea of *non assumpsit*, or a plea traversing the contract or agreement alleged in the declaration, shall operate only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the contract, promise, or agreement alleged may be implied by law.

*Exempli gratia*. In an action on a warranty, such pleas will operate as a denial of the fact of the sale and warranty having been given, but not of the breach; and, in an action on a policy of insurance, of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with warranties.

In actions against carriers and other bailees for not delivering or not keeping goods safe, or not returning them on request, and in actions against agents for not accounting, such pleas will operate as a denial of any express or implied contract to the effect alleged in the declaration, but not of the breach.

To causes of action to which the plea of "never was indebted" is applicable, as provided in Schedule B. (36) of the Common Law Procedure Act, 1852, and to those of a like nature, the plea of *non assumpsit* shall be inadmissible, and the plea of "never was indebted" will operate as a denial of those matters of fact from which the liability of the defendant arises; *exempli gratia*, in actions for goods bargained and sold, or sold and delivered, the plea will operate as a denial of the bargain and sale, or sale and delivery, in point of fact; in the like action for money had and received it will operate as a denial both of the receipt of money and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff.

7. In all actions upon bills of exchange and promissory notes, the plea of "*non assumpsit*" and "never indebted" shall be inadmissible. In such actions, therefore, a plea in denial must traverse some matter of fact; *exempli gratia*, the drawing, or making, or indorsing, or accepting, or presenting, or notice of dishonour of the bill or note.

8. In every species of actions on contract, all matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law, on the ground of fraud or otherwise, shall be specially pleaded; *exempli gratia*, infancy, coverture, release, payment, performance, illegality of consideration, either by statute or common law, drawing, indorsing, accepting, &c., bills or notes by way of accommodation, set-off, mutual credit, unseaworthiness, misrepresentation, concealment, deviation, and various other defences, must be pleaded.

9. In actions on policies of assurance, the interest of the assured may be averred thus:—"That A, B, C, and D [or someone one of them], were or was interested," &c. And it may also be averred, "that the insurance was made for the use and benefit, and on the account, of the person or persons so interested."

10. In actions on specialties and covenants, the plea of *non est factum* shall operate as a denial of the execution of the deed in point of fact only, and all other defences shall be specially pleaded, including matters which make the deed absolutely void, as well as those which make it voidable.

11. The plea of "*nil debet*" shall not be allowed in any action.

12. All matters in confession and avoidance shall be pleaded specially, as above directed in actions on simple contracts.

13. In any case in which the plaintiff (in order to avoid the expense of the plea of payment or set-off) shall have given credit in the particulars of his demand for any sum or sums of money therein admitted to have been paid to the plaintiff, or which the plaintiff admits the defendant is entitled to set-off, it shall not be necessary for the defendant to plead the payment or set-off of such sum or sums of money.

But this rule is not to apply to cases where the plaintiff, after stating the amount of his demand, states that he seeks to recover a certain balance, without giving credit for any particular sum or sums, or to cases of set-off where the plaintiff does not state the particulars of such set-off.

14. Payment shall not in any case be allowed to be given in evidence in reduction of damages or debt, but shall be pleaded in bar.

15. In actions for detaining goods, the plea of *non detinet* shall operate as a denial of the detention of the goods by the defendant, but not of the plaintiff's property therein; and no other defence than such denial shall be admissible under that plea.

16. In action for torts, the plea of not guilty shall operate as a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant, and not of the facts stated in the inducement, and no other defence than such denial shall be admissible under that plea; all other pleas in denial shall take issue on some particular matter of fact alleged in the declaration.

*Exempli gratia*. In an action for a nuisance to the occupation to a house by carrying on an offensive trade, the plea of not guilty will operate as a denial only that the defendant carried on the alleged trade in such a way as to be a nuisance to the occupation of the house, and will not operate as a denial of the plaintiff's occupation of the house.

In an action for obstructing a right of way, such plea will operate as a denial of the obstruction only, and not of the plaintiff's right of way.

In an action for slander of the plaintiff in

his office, profession, or trade, the plea of not guilty will operate in denial of speaking the words, of speaking them maliciously, and in the defamatory sense imputed, and with reference to the plaintiff's office, profession, or trade, but it will not operate as a denial of the fact of the plaintiff holding the office or being of the profession or trade alleged.

In actions for an escape, it will operate as a denial of the neglect or default of the sheriff or his officers, but not of the debt, judgment, or preliminary proceedings.

In actions against a carrier, the plea of not guilty will operate as a denial of the loss or damage, but not of the receipt of the goods by the defendant as a carrier for hire, or of the purpose for which they were received.

17. All matters in confession and avoidance shall be pleaded specially, as in actions on contract.

18. In actions for trespass to land, the close or place in which, &c. must be designated in the declaration by name or abutments or other description, in failure whereof the plaintiff may be ordered to amend, with costs, or give such particulars as the Court or a Judge may think reasonable.

19. In actions for trespass to land, the plea of not guilty shall operate as a denial that the defendant committed the trespass alleged in the place mentioned, but not as a denial of the plaintiff's possession, or right of possession of that place, which, if intended to be denied, must be traversed specially.

20. In actions for taking, damaging, or converting the plaintiff's goods, the plea of not guilty shall operate as a denial of the defendant having committed the wrong alleged, by taking, damaging, or converting the goods mentioned, but not of the plaintiff's property therein.

21. In every case in which a defendant shall plead the general issue, intending to give the special matter in evidence, by virtue of an Act of Parliament, he shall insert in the margin of the plea the words "By Statute," together with the year or years of the reign in which the Act or Acts of Parliament upon which he relies for that purpose were passed, and also the chapter and section of each of such Acts, and shall specify whether such Acts are public or otherwise, otherwise such plea shall be taken not to have been pleaded by virtue of any Act of Parliament; and such memorandum shall be inserted in the margin of the issue, and of *nisi prius* record.

22. A plea containing a defence arising after the commencement of the action may be pleaded together with pleas of defences arising before the commencement of the action, provided that the plaintiff may confess such plea, and thereupon shall be entitled to the costs of the cause up to the time of the pleading of such first-mentioned plea.

23. When a plea is pleaded with an allegation that the matter of defence arose after the last pleading, the plaintiff shall be at liberty to confess such plea, and shall be entitled to the costs of the cause up to the time of pleading such plea; provided that this and the preceding rule shall not apply to the case of such plea pleaded by one or more only out of several defendants.

24. Courts of Error may award a repleader, or direct a trial *de novo*.

25. The costs of proceeding in error shall be taxed and allowed as costs in the cause, and no double costs in error shall be allowed to either party.

26. On error from one of the Superior Courts, such Court shall have power to allow interest for such time as execution has been delayed by the proceedings in error, for the delaying thereof; and the Master, on taxing the costs, may compute such interest without any rule of Court or order of a Judge for that purpose.

27. In no case shall error be brought for any error in a judgment with respect to costs, but the error (if any) in that respect may be amended by the Court in which such judgment may have been given, on the application of either party.

28. A person admitted to sue in *formâ paperis* shall not in any case be entitled to costs from the opposite party, unless by order of the Court or a Judge.

29. If a plaintiff in ejectment be nonsuited at the trial, the defendant shall be entitled to judgment for his costs of suit.

30. If the plaintiff in ejectment appear at the trial, and the defendant does not appear, the plaintiff shall be entitled to a verdict without producing any evidence, and shall have judgment for his costs of suit, as in other cases.

31. No entry or continuances, by way of imparlance, *curia advisari vult*, *vicecomes non misit breve*, or otherwise, shall be made upon any record or roll whatever, or in the pleadings.

32. All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in Term or Vacation, when signed, and shall not have relation to any other day: Provided that it shall be competent for the Court or a Judge to order a judgment to be entered *nunc pro tunc*.

CAMPBELL.	C. CRESSWELL.
JOHN JERVIS.	T. J. PLATT.
FRED POLLOCK.	E. VAUGHAN WILLIAMS.
E. H. ALDERSON.	SAMUEL MARTIN.
J. T. COLERIDGE.	CHAS. CROMPTON.

## EASTER TERM EXAMINATION.

### NEW REGULATIONS.

THE Examiners appointed for the Examination of persons applying to be admitted Attorneys, have appointed *Monday*, the 25th April, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the Examination. The examination will commence at 10 o'clock precisely.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left with the Secretary, on or before *Thursday*, the 21st April.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.

If part of the Term has been served with a *Barrister, Special Pleader, or London Agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the Preliminary Questions (No. 1); and it is expected that he should answer in *three* or more of the other heads of inquiry,—*Common Law and Equity* being two thereof.

Under the new Rules of Hilary Term, 1853, it is provided, that every person who shall have given notices of examination and admission, and "who shall not have attended to be examined, or not have passed the examination, or not have been admitted, may, *within ONE WEEK after the end of the Term* for which such notices were given, *renew* the notices for examination or admission *for the then next ensuing*

Term, and so from time to time as he shall think proper;" but shall not be admitted until the last day of the Term, unless otherwise ordered.<sup>1</sup>

<sup>1</sup> This Rule has been made in order to avoid the practice of giving double notices.

## NOTES OF THE WEEK.

### COMMISSION FOR CONSOLIDATION OF STATUTES.

THE following gentlemen have been appointed Commissioners for the Consolidation of the Statutes, viz.:—

Mr. Bellenden Ker.  
Mr. T. Chisholm Anstey.  
Mr. G. Coode.  
Mr. M. J. Brickdale.  
Mr. J. W. Rogers.

### SOLICITORS' REMUNERATION.

We understand that a numerous deputation from the Council of the Incorporated Law Society recently attended the Lord Chancellor, in support of a memorial for the improvement of the system of Taxation of Costs in Chancery. They were, as might be expected from the noble Lord, courteously received, attentively listened to, and assured that their suggestions would be duly considered.

### IRISH LAW APPOINTMENTS.

Mr. *Berwick*, Q. C., has been appointed Crown Prosecutor for the Circuits of the King's County and Westmeath County. Mr. *James Plunkett*, Q. C., for the Counties of Meath and Kildare, and Mr. *Ball*, for the Queen's County and Carlow County.

### NEW MEMBERS OF PARLIAMENT.

John Pritchard, Esq., for Bridgnorth, in the room of Sir Robert Pigot, Bart., whose election has been declared void.

Montague Joseph Fielden, Esq., for Blackburn, in the room of William Eccles, Esq., whose election has been declared void.

## RECENT DECISIONS IN THE SUPERIOR COURTS AND SHORT NOTES OF CASES.

### Lord Chancellor.

*In re Collinson.* March 16, 1853.

TRUSTEE ACT, 1850.—APPOINTMENT OF NEW TRUSTEE ON PETITION.—LUNATIC.

An order was refused on petition under the 13 & 14 Vict. c. 60, for the appointment of a new trustee of customary property which

the petitioner had purchased and had conveyed to his son, who was then a minor and had since become incurably lunatic, although on the affidavits of the petitioner and the solicitor acting in the purchase, that the money was furnished by the petitioner and the estate conveyed without the intention of disposing of his interest



therein, but solely because it was necessary according to the custom to convey to a trustee in order to have power to devise, and also that the son was to have executed a declaration of trust on his attaining 21. And the petition was refused in order to file a bill or claim to bring the lunatic before the Court.

THIS was a petition under the 13 & 14 Vict. c. 60, for the appointment of a new trustee to certain property of customary tenure which the petitioner had had conveyed, in the year 1831, to his son, as trustee, and who was admitted on the Court Roll, in order to enable the petitioner to dispose of the same by will, which he otherwise could not do according to the custom of the manor. It was stated that the son was then a minor, and was to execute a proper deed of trust on his attaining 21, but that he had since become of unsound mind, and was likely to remain so permanently.

*Malins* and *Bates* in support, on affidavits of the petitioner and of the solicitor who acted in the purchase, that the petitioner furnished the purchase-money, and never intended to part with the beneficial interest in the property.

The Lord Chancellor said, that as by acting on the present *ex parte* application, although the evidence in support of the facts was strong, the lunatic might be deprived of his own estate, the best course would be to file a claim or bill to have the lunatic duly presented before the Court, and the petition must therefore be refused.

#### Lords Justices.

*In re Mostyn, ex parte Griffiths.* March 4, 1853.

**BANKRUPT. — PETITIONING CREDITOR'S DEBT.—JUDGMENT ON BOND RECOVERED AFTER TRADING CEASED.**

*A bond was given to a creditor for a debt whilst the debtor was carrying on trade, but it appeared that judgment was obtained thereon on default after the trading had ceased: Held, reversing the decision of Mr. Commissioner Perry annulling the adjudication on such judgment as the petitioning creditor's debt, that such debt was sufficient to support the adjudication.*

THIS was an appeal from the decision of Mr. Commissioner *Perry*, annulling the adjudication made herein on Jan. 17 last, upon the ground that the petitioning creditor's debt was insufficient, as having been contracted after the trading ceased. It appeared that a bond had been given during the period he traded, but that, after he ceased in 1848, an action had been brought and judgment recovered on the bond in Easter Term, 1850. And he was after adjudged a bankrupt upon a summons and affidavit of debt under s. 72 of the 12 & 13 Vict. c. 106, but the Commissioner had subsequently annulled the adjudication.

*Bacon* and *Aspland* in support of the appeal; *Swanston*, *Bramwell*, and *Vaughan Williams*, contrâ.

The Lords Justices said, the question was, whether a creditor who had obtained a judgment for debt and costs was competent to present a petition for an adjudication, although the judgment had been obtained after the debtor had ceased to trade. It was clear from the decisions in *Ambrose v. Clendon*, 2 Stra. 1042; *Dawe v. Holdsworth*, Peake, 64; and *Ex parte Bamford*, 15 Ves. 549, that a trader, who after becoming indebted left off trade, could not be heard to say he had left off trading, if the question arose, whether the debt could be made the ground of proceedings against him in bankruptcy as a trader, and that a bond, or a judgment debt, did not extinguish the original debt so as to disable the creditor from making his debtor a bankrupt on the debt. The appeal must therefore be allowed and the adjudication stand.

*In re Leake, ex parte Werrington.* March 23, 1853.

**BANKRUPT. — ADMISSION OF PROOF ON BILLS OF EXCHANGE, WHERE COLLATERAL SECURITY.**

*A creditor, previous to advancing money, had obtained a mortgage of certain salt works, and the assignment of a policy in consideration of such advances, which were upon various bills of exchange, with interest at 6 per cent. On the bankruptcy of the debtor, the creditor, who was willing to give up all claim against the real estate of the bankrupt, was held, allowing an appeal from the Commissioner, entitled to prove on the bills as an unsecured creditor.*

THIS was an appeal from the decision of the Commissioner rejecting the proof of the appellant in this bankruptcy in respect of certain bills of exchange, with interest at 6 per cent. on the ground of usury as secured also by way of mortgage on real property belonging to the bankrupt. It appeared the advances in question were made in pursuance of an agreement whereby certain salt works were mortgaged and a policy of insurance assigned to the appellant which were to be as a further security for any sums he might from time to time advance, and the interest was arranged to be at 6 per cent.

*Lloyd* and *Giffard* for the appellant; *Swanston* and *G. L. Russell* for the assignees, contrâ.

*Cur. ad vult.*

The Lords Justices said, that the Statute of 12 Anne, st. 2, c. 16, rendering void all contracts for the forbearance of money on which an interest was reserved at a larger rate than 5 per cent., had been repealed by the 3 & 4 Wm. 4, c. 98, and the 2 & 3 Vict. c. 37, so far as related to bills of exchange, and that therefore the appellant, as he was willing to give up all claim against the real estate of the bankrupt, was entitled to prove on the bills as an unsecured creditor, and the appeal was accordingly allowed.

**Master of the Rolls.***Wedcoll v. Nixon.* March 11, 1853.**SPECIFIC PERFORMANCE OF CONTRACT.—WILL.—PROOF OF CODICIL.—TITLE.**

*A testator purchased an advowson in 1845, having by his will, in 1836, made his wife his sole legatee. On his death, this will was duly proved, but it appeared there was a codicil, in which the testator ratified and confirmed his will "made in 1836," but this codicil had not been proved: Held, in a suit for the specific performance of an agreement to purchase such advowson, that the purchaser was entitled to have the codicil proved; and held, also, that as there did not appear to be any other will in 1836, it sufficiently republished the will of 1836 to pass the advowson.*

THIS was a suit to enforce the specific performance of an agreement entered into by the defendant to purchase of the plaintiff an advowson. It appeared that the plaintiff was entitled to the property as sole legatee of her husband, who had purchased it in 1845, under his will made in the year 1836, and which had been duly proved. There was, however, a codicil duly executed and attested, dated in 1847, whereby he ratified and confirmed his will "made in 1836," but this codicil had not been proved, and the defendant now objected to perform his contract on the ground of defective title.

*R. Palmer, Lloyd, and Babington* appeared for the several parties.

The *Master of the Rolls* said, that as it appeared no other will had been made in 1836, the codicil amounted to a sufficient publication of that will, but the defendant was entitled to have it duly proved, and the case must accordingly stand over, with leave to the plaintiff to adduce further evidence.

*Macleod v. Annesley.* March 15, 1853.**BREACH OF TRUST.—IMPROVIDENT INVESTMENT.—ACQUIESCENCE OF SOME OF PARTIES INTERESTED.**

*A trustee under a settlement which contained a power of investment in lands in England, Ireland, Scotland, or Wales, advanced a sum of 7,320*l.*, part of the trust fund, at the request of some of the parties interested, on mortgage of leaseholds for lives in Ireland, but which were subject to a head-rent of the amount of 420*l.*, and in addition to 103*l.* for rent charges and quit rents. The income was 970*l.* The property, in consequence of depreciation, was insufficient: Held, that the investment was a breach of trust, and that the acquiescence of some of the parties interested did not do away with his liability, with costs, for such loss to the plaintiff who had not so acquiesced.*

UNDER the marriage settlement of the

father and mother of the plaintiff, a sum of 10,000*l.* Irish currency, was settled on certain trusts therein mentioned, with power to invest the same on real security in England, Ireland, Scotland, or Wales. It appeared the defendant, who was the plaintiff's brother, had been appointed a trustee on the death of the original trustees, and that in May, 1843, he had advanced 7,320*l.*, part of the trust fund on mortgage of certain leaseholds for lives in the county of Clare. The property in question was subject to a head-rent of about 420*l.*, and to rent charges and quit rents of 103*l.* The rental, which was at the time 970*l.* per annum, had become so considerably reduced as to be insufficient to pay the interest, and the value of the property was also greatly diminished. This suit was thereupon instituted, charging the defendant with the investment as for a breach of trust.

*Lloyd and Karlake* for the plaintiff.

*R. Palmer and Renshaw* for the defendant, urged the investment had been made with the acquiescence of the majority of the parties interested.

The *Master of the Rolls* said, that although there was no objection to invest in leasehold lands for lives in Ireland which was the ordinary tenure in that country, it was necessary for parties investing to exercise the greater caution. It appeared the estate was inadequate when the mortgage was made, as being property of an agricultural nature, it should at least have been of one-third, and as to the house property of one-half, more value than the money lent, and it could not therefore be considered a proper security. With regard to acquiescence, although the defendant was proved to be unwilling to enter into the mortgage, and to have done so at the request of several members of the family, it did not appear such acquiescence was brought home to the plaintiff, and the cases also went to show that trustees were liable for a breach of trust, notwithstanding the act was done at the instance of some members of the family. The defendant must therefore be held liable to make good the sum in question, and an account be directed as prayed, with costs.

**Vice-Chancellor Stuart.***Goodwin v. Fielding.* March 15, 16, 1853.**SPECIFIC PERFORMANCE OF CONTRACT.—UNDERLEASE NOT EXECUTION OF PAROL AGREEMENT TO ASSIGN.**

*The defendant, in August, 1852, agreed by parol to assign the unexpired term of her lease for 400*l.* to F., and in the following December, alleged to be in execution thereof, she agreed to grant an underlease of the premises to him for 1,000*l.* It appeared that in the intervening October, the defendant had agreed to surrender her lease to the plaintiff, the owner in fee, who thereupon had granted a lease thereof for 25 years: Held, that the plaintiff was entitled to a*

*decree for the specific performance of the contract by the defendant, with costs.*

THIS was a suit to enforce the specific performance of an agreement, dated Oct. 27, 1852, entered into by the defendant to surrender for 550*l.* to the plaintiff, who was the owner in fee, the residue of the unexpired term of her lease of the Beulah Spa Hotel and Gardens, Norwood, and in consideration of being released from the covenants thereof. It appeared that on December 16, the defendant granted an underlease to Mr. Franks for the residue of her term, less a day, in consideration of 1,000*l.*, and in pursuance, as was alleged, of a previous parol agreement made on August 11, whereby the defendant was to assign her interest to him for 400*l.*, and Mr. Franks guaranteed her against the plaintiff's claim in respect of the agreement in October, and he entered into possession. The plaintiff was therefore unable to perform an agreement which he had entered into, to grant a lease of the property to Mr. Masters for 25 years, and this suit was accordingly instituted.

*Daniell and H. T. Bristowe* for the plaintiff; *Makins and W. D. Lewis* for the defendant; *Bacon and Druce* for Mr. Franks.

The *Vice-Chancellor* said, the only question was, whether the underlease to Franks in December was in execution of the previous parol agreement in August. It appeared that agreement was for an assignment and not for an underlease, and was for an entirely different sum as consideration, and the grant of the underlease in December, must therefore, in accordance with the decision of *Holland v. Eyre*, 2 S. & S. 194, be looked upon as a fresh contract between the parties, and could not, as alleged, have been made in pursuance of the previous agreement. A decree was accordingly made for specific performance as sought for, and the agreement of December be declared void, with costs.

#### **Vice-Chancellor Wood.**

*Official Manager of Grand Trunk, or Stafford and Peterborough Union Railway Company v. Brodie.* March 4, 1853.

**WINDING-UP ACTS. — LIABILITY OF OFFICIAL MANAGER PERSONALLY FOR COSTS.**

On the hearing of a case prosecuted by the official manager, under the 11 & 12 Vict. c. 45, s. 53, the Court held the suit should not have so been carried on, and by the decree, directed the costs to be paid by "W. T., the official manager of the company." Held, that the defendants were only entitled to proceed against the assets of the company, and the contributories, and the subpoena for costs and attachment thereon against W. T. personally, were set aside.

THIS was a motion to set aside the subpoena for costs and attachment thereon, issued out by the defendants in this suit, which it appeared had been originally instituted by another person, but ordered under the 11 & 12 Vict. c. 45, s. 53, to be prosecuted by the present plaintiff. On the hearing, the Court

held the suit should not have been taken up by the plaintiff, and dismissed the bill with costs, which were directed by the decree to be paid by W. Turquand, the official manager of the company, and the defendants thereupon proceeded for the same against Mr. Turquand personally.

*Daniell and Little* for the official manager in support, referred to sect. 59 of the Act, which provides, that "no judgment, decree, or order to be obtained or entered up against the official manager of any company, as representing the same, shall affect or be executed against the person or property of the party who may for the time being be such official manager, otherwise than as a contributory, and that every official manager shall always be fully reimbursed and indemnified, out of the assets of the company or out of the credits thereof, and, if necessary, by calls to be made on the contributories, for all losses, costs, charges, damages, and expenses, without deduction, save and except such, if any, losses, costs, charges, damages, and expenses as shall have been unduly or improperly sustained or incurred by such official manager."

*Selwyn and Kennion* for the defendants, contra.

The *Vice-Chancellor* said, the effect of the words "official manager of the company" was to give the defendants a right to proceed against its assets and contributories, and that they could not have two remedies and proceed besides against the official manager personally. The motion would therefore be granted for a stay of the proceedings.

#### **Insolvent Debtors' Court.**

(*Coram* Mr. Commissioner Phillips.)

*In re Potter.* March 12, 1853.

**INSOLVENT.—ORDER FOR PROTECTION.—VEXATIOUS ACTION.—REFERENCE TO ARBITRATION.**

Protection granted where a reference had been made to arbitration of an action against the opposing creditors, although the sum which they had previously tendered and paid into Court had been taken out by the debtor's solicitor, and the award had been in their favour on all the issues, with costs. Semble, protection cannot be refused either for a vexatious defence or the bringing of an action.

Cooke appeared on behalf of Messrs. Lucas, who were creditors of this insolvent, to oppose his petition for protection on the ground he had improperly brought an action against them to recover for certain work done for them by the insolvent as a plasterer. It appeared that on the opposing creditors having discharged the insolvent from their employ, he sent in a claim for 78*l.* odd, and had afterwards brought an action for that amount, when they offered to pay 40*l.*, which was refused. The sum of 40*l.* was thereupon paid into Court and taken out by the insolvent's solicitor, and on the trial

the matter was referred to an arbitrator, who awarded against the insolvent on all the issues, with costs.

The Commissioner said, that although the vexatiously bringing an action might be as injurious to a creditor, as its defence, even the

latter was not mentioned in the Protection Acts as disentitling to protection, and besides there had in the present case been a reference to arbitration, which removed the ground of its being vexatious, and the insolvent was entitled to an order.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### LAW OF PROPERTY AND CONVEYANCING.

#### ADVOWSON.

*Mandamus.*—Trustees of benefice, how compellable to present a clerk elected in pursuance of the trust deed.—An advowson was vested in feoffees, in trust, upon every avoidance, to present to the ordinary such person as should be elected by a majority of the landowners in a parish. On motion for a mandamus to the trustees to present a clerk, on the ground that he had been so elected: *Held*,

That either the remedy of the landowners against the trustees was in equity for a breach of trust, or, if the landowners had a legal right, their remedy was by *quare impedit*; and that in either case the mandamus would not lie.

*Held*, also, that the remedy, if any, of the clerk was in equity, and that he had no legal right. *Regina v. Trustees of Orton*, 14 Q. B. 139.

Cases cited in the judgment: *Powel v. Milbank*, 1 T. R. 399, 401, n. (d.); *Rex v. Bishop of Chester*, 1 T. R. 396; *Rex v. Marquis of Stafford*, 3 T. R. 646, 651; *Regina v. Chapter of Exeter*, 12 A. & E. 512, a.

#### ANNUITY.

1. *Returning or retaining consideration money.*—An annuity was granted in consideration, as the deed stated, of 700*l.* paid at the time to the grantor. The grantor owed 400*l.* to the attorney who prepared the deed and acted for both parties in the annuity transaction. The deed was executed and the money paid by the grantee at the attorney's office. Just before execution, the attorney (who had suggested the borrowing of 700*l.* on annuity) took the grantor aside, and told him that the delivery of the money must be formally done to make the thing valid. The money was then paid to the grantor, on his executing the deed; but, immediately afterwards, and before leaving the house, the grantor, at the attorney's request, paid the attorney 400*l.* of the 700*l.*, in discharge of the 400*l.* due to him, and of costs and expenses on the annuity transaction. The grantor afterwards stated on affidavit that he could not have left the house without making this payment.

*Held*, that such payment of a debt and expenses *bond fide* due was not a retaining or returning of the consideration money within Stat. 53 Geo. 3, c. 141, s. 6, and did not affect

the validity of the grant. *Aberdeen v. Jerdan*, 15 Q. B. 990.

2. *Sufficiency of memorial for enrolment.—Consideration.*—The consideration for an annuity was stated in the memorial thus:—"3,000*l.*, part of a sum of 3,186*l.* 2*s.* 3*d.*, due and owing from [the grantor] to [the grantees] at the time of granting the said annuity, as follows,—1,882*l.* 3*s.* 6*d.* for work and labour and for goods sold and delivered, and 1,303*l.* 18*s.* 9*d.*, for money lent and advanced, and interest thereon, in the sums and at the times following, that is to say, 250*l.* paid by the cheque of [the grantees] on, and dated, the 29th of December, 1837, and drawn, in the then name of their trading firm, on Messrs. Smith, Payne, and Smith, their bankers,—500*l.* paid by a like cheque, dated the 24th of February, 1838,—23*l.* 10*s.* paid by a like cheque, dated the 28th of Feb., 1838,—270*l.* paid by a like cheque, dated the 25th of July, 1838,—200*l.* paid by a like cheque, dated the 11th of Jan., 1839,—interest on the above sums respectively up to the 27th of April, 1839 (the date of the grant) 60*l.* 8*s.* 9*d.*:"

*Held*, that, supposing a memorial to be necessary, the above sufficiently showed how and when the several sums which constituted the consideration for the annuity, were paid. *Doe dem. Church v. Pontifex*, 9 C. B. 229.

3. *Enrolment.—Where consideration a pre-existing debt.*—Where the consideration for an annuity is a pre-existing debt, no memorial need be enrolled. *Doe dem. Church v. Pontifex*, 9 C. B. 229.

4. *Enrolment of.—By whom.*—It is the duty of the grantee of an annuity to enrol it under the 53 Geo. 3, c. 141, and he cannot take advantage of the want of such enrolment. *Molton v. Camroux*, 4 Exch. R. 17.

Cases cited in the judgment: *Davis v. Bryan*, 6 B. & C. 651; *Cowper v. Godmond*, 9 Bing. 748; *Churchill v. Bertrand*, 3 Q. B. 568.

#### BOND BY CROWN DEBTOR.

*Execution of power.*—A bond to the Crown, under 33 Hen. 8, c. 39, binds all lands of the obligor over which he has a disposing power at the time he entered into the bond.

The giving such a bond is a voluntary act upon the part of the obligor, and he cannot by afterwards exercising the power, defeat the right of the Crown.

Such bond is within the 33 Hen. 8, c. 39, though made payable to "the King, his heirs and successors;" and, being a record, can be

looked at by the Court, although it be not set out in the pleadings. *Regina v. Ellis*, 4 Exch. R. 652.

Cases cited in the judgment : *Scrags v. Gresham*, Anders. 129; *Yale v. Rex*, 6 Bro. P. C. 27.

#### BUILDING LEASE.

*Omission of covenant required by local act.—Corporation aggregate.—Distinction between executed and executory contracts.*—A dean and chapter were empowered by a local act to grant building leases of certain lands for 99 years, provided that in every such lease there was a covenant by the lessee to build. They granted a lease for 99 years, omitting the covenant.

During the supposed term, after the death of the dean under whom the lease had been granted, the lessee remained in possession, and continued to pay the reserved rent to the succeeding deans and chapter, who distributed it among themselves : *Held*, that, if the lease was voidable only, it was made good, as against each successive dean and chapter, for their own times respectively, by such their receipt and distribution of the rent.

And that, if the lease was absolutely void, such receipt and distribution were evidence from which, without proof of any instrument under seal, a demise from year to year might be presumed against them; the presumption in such a case being the same against a corporation aggregate as against an ordinary person. *Doe dem. Pennington v. Tuniere*, 12 Q. B. 998.

#### COMMENDAM.

*What is not a taking or holding in commendam.—Rectory.*—By a local Act of Parliament (16 Geo. 2, c. 28), the hamlet of Bethnal Green, in the parish of Stepney, was divided from it and made a distinct parish under the name of St. Matthew, Bethnal Green, with a parish church; and the advowson was vested in the patrons of the original church; and it was enacted, "that the rectory of the said new church or parish shall not be taken or held in commendam." The rector of St. Matthew, Bethnal Green, while holding that benefice, accepted another : *Held*, that the rectory did not thereby, and by force of the Statute, become void, the rectory not being rated in the king's books, and the patrons not making a new presentation. *King v. Alston*, 12 Q. B. 971.

#### CONVEYANCE.

1. *Creating votes.—Executors estopped from setting up defence.*—In covenant upon an annuity deed, *held*, that the defendants (executors) were estopped from pleading that the deed was made fraudulently and collusively between the testator and the plaintiff, for the purpose of multiplying voices, and subject to a secret trust and condition that no estate or interest should pass beneficially to the plaintiff by the indenture. *Phillipotts v. Phillipotts*, 10 C. B. 85.

2. *For purpose of creating votes, how far*

*valid.*—Under the Statutes 7 & 8 Wm. 3, c. 25, s. 7, and 10 Ann. c. 23, s. 1, a fraudulent conveyance made for the mere purpose of conferring a vote, is void only to the extent of preventing the right of voting from being acquired, but is valid and effectual, as between the parties, to pass the interest. *Phillipotts v. Phillipotts*, 10 C. B. 85.

Cases cited in the judgment : *Doe d. Roberts v. Roberts*, 2 B. & Ald. 367; *Bessey v. Windham*, 6 Q. B. 166.

#### COPYHOLD.

1. *Customary tenement for joint lives of lord and tenant.—Admittance of party claiming under custom.—Ejectment.*—By the custom of a manor, the customary tenements thereof were held of the lord, for the joint lives of the customary tenant and the lord, at the will of the lord, according to the custom of the manor, at customary rents and services, and were descendible from ancestor to heir. Alienation *inter vivos* was made by customary deed of bargain and sale from alienor to alienee, and surrender and admittance thereon in the customary Court, the deed being licensed by the lord, and a memorandum of the licence endorsed on the deed. A fine was paid on the death of lord or tenant, and on alienation. The admittance of an heir, in form, stated that the heir took of the lord, upon the demise of the steward, the tenement, now in the hands of the lord, to be granted to the heir on the death of the ancestor, to hold for the joint lives, &c. (as by the custom above stated).

*Held*, that an heir could not, before being admitted, maintain ejectment against a stranger. *Doe dem. Dand v. Thompson*, 13 Q. B. 670.

Cases cited in the judgment : *Doe d. Hamilton v. Clift*, 12 A. & E. 566, 567, 581; *King v. Larde*, Cro. Car. 404.

2. *Surrender by trustees under private Act of Parliament.—Necessity of admittance.*—Testator surrendered copyholds to the use of his will, and devised them to trustees for a term of years, on certain trusts, subject to which he devised them for life, with remainder in tail, and divers remainders over, with a provision for cesser of the term on the trusts being satisfied. On testator's death, the trustees were admitted tenants to hold for the term upon the trusts of the will; and a fine was duly paid upon such admission. Afterwards, and after the trusts of the term were satisfied, a private act (7 & 8 Vict. c. 24) was passed, by which it was enacted that certain new trustees therein named might sell the premises freed from the limitations of the will, and declare that the copyhold tenants of the premises should thenceforth be trustees of the legal estate thereof for the purchaser, and that such tenants should be such trustees accordingly, until the same should have been surrendered; with power for the new trustees, by any surrender according to the custom of the manor, and in the same manner as if they were copyhold tenants of the same, to surrender the

copyhold hereditaments so to be sold to the use of the purchaser. The Act contained a clause saving the rights of all persons, except those interested under the will. The said trustees, having sold the premises, tendered a formal surrender to the steward, which he refused to accept. The grounds of refusal were, that the trustees were not tenants of the manor, and must themselves be admitted before they could surrender; that the estate tail was not barred, for this could only be done by a surrender for that purpose, on which, by the custom of the manor, a fine would be payable; and that the lord was no party to the private act, and not bound by it : *Held*,

That the tenant for life and remainder-man in tail had already been admitted by the admittance of the original trustees, and as, under sect. 50 and other sections of Stat. 3 & 4 Wm. 4, c. 74, the tenant for life and remainder-man in tail might (independently of the private act), by one surrender, have barred the entail and conveyed to the purchaser, the lord was not prejudiced by the private act, substituting the new trustees as surrenderors in lieu of the tenant for life and remainder-man in tail; and that he was bound to accept the surrender. *Regina v. Lords, &c., of Weedon Beck*, 13 Q. B. 808.

3. *Right of tenants to common appendant*.—There is no general common law right of tenants of a manor to common appendant on the waste. *Lord Dunraven v. Llewellyn*, 15 Q. B. 791.

#### CROSS REMAINDERS.

*Deed.—Shares, accruing and original*.—By deeds of lease and release, being the settlement made on the marriage of *E. M. H.* and *W. B.*, by which deeds, and a fine levied in pursuance of the covenants contained in the release, certain lands of which *E.*, the wife of *W. H.*, and mother of *E. M. H.*, was then seised in fee, a settlement was made after the solemnisation of the said marriage, to the use of the said *W. H.* for his life, with remainder to the use of the said *E.*, the wife of the said *W. H.* for life, and then with remainder for the use of the said *W. B.* for his life; and then for the use of the said *E. M.*, his intended wife, for her life, with remainder to the use of all and every the children of the body of the said *W. B.*, on the body of the said *E. M. H.* his intended wife to be begotten, to be equally divided among them, share and share alike, to take as tenants in common and not as joint tenants, and of the several and respective heirs of the bodies of all and every such children lawfully issuing; and in case one or more of such children should happen to die without issue of his or their body or bodies, then as to the share or shares of him or them so dying without issue, to the use of the survivors or others of them, share and share alike, to take as tenants in common and not as joint tenants, and the several and respective heirs of their bodies lawfully issuing; and in case all such children but one should happen to die

without issue, or if there should be but one such child, then to the use of such surviving or only child, and of the heirs of his or her body lawfully issuing, and for default of such issue, then to the use of the said *E. M. H.*, the wife of the said *W. H.*, and of their heirs and assigns for ever. The marriage was duly solemnised. There was issue of it eight children, three of whom died infants, unmarried, and in the lifetime of their parents. *E. M.*, the wife of *W. B.*, survived her husband as well as the said *E. M. H.*, and at the time of her death, the limitation in favour of the issue of the marriage came into operation : *Held*, that cross-remainders were here created by apt words in the deed, and that the word "share" must be understood as embracing accruing as well as original shares. *Doe d. Clift v. Birkhead*, 4 Exch. R. 110.

Cases cited in the judgment : *Doe dem. Foquett v. Worsely*, 1 East. 430; *Nevil v. Nevil*, Brownlow, 152.

#### COVENANT.

1. *Dependent or independent*.—*Covenants for title by assignor, and for payment by assignee, on assignment to trustee for both*.—In an action of covenant, the deed was set forth on oyer, reciting a former deed between plaintiff and defendant, whereby plaintiff licensed defendant to use a patent, of which plaintiff appeared by the deed, as recited, to have obtained a regular grant. *Quære*, whether defendant was estopped by the latter deed from denying that the patent was valid, as recited in the earlier deed, or only from denying that a deed alleging that fact was executed.

By the earlier deed, plaintiff licensed defendant to use his patent during a term, paying a stated royalty. By the deed declared upon, reciting the earlier deed and a subsequent contract of defendant with plaintiff for purchase of half the patent, subject to the former deed but with benefit to the defendant of half the royalty, plaintiff, in pursuance of the contract, and in consideration of 2,200*l.* to be paid to him by defendant, assigned the patent to a trustee, subject to the previous indenture, and in trust to apply the sums accruing from licences to use the patent, and likewise to apply the royalties, for or under the direction of plaintiff and defendant respectively, in specified proportions, and to stand possessed, as to one moiety of the letters patent, for plaintiff, as to the other, for defendant. Plaintiff covenanted that, for and notwithstanding anything done, &c., by him, the patent was valid, and should be held and enforced by the trustee without lawful let, &c., by plaintiff, or any claiming under him, or by his act or default. And defendant covenanted with plaintiff to pay him the 2,200*l.* by instalments. To a declaration in covenant for non-payment of such instalments defendant pleaded, after oyer of the deed declared upon, that plaintiff was not the first inventor; by reason whereof the patent, before the supposed

breach of covenant, was void. Replication, estoppel.

*Held*, on general demurrer, that the plea was bad. For—

1. No eviction was stated; and, in fact, the matter pleaded did not go to the whole consideration; since, even if the patent was void, the first executed deed would have bound the defendant, by estoppel, to payment of the royalty; and, by the latter deed, he became entitled to half the royalty.

2. That the covenant to pay the 2,200*l.* was an independent covenant, and capable of being enforced whether the plaintiff's covenants were performed or not. *Cutler v. Bower*, 11 Q. B. 973.

2. *Construction of.—Reservation of timber trees.—Waste.—Lease of quarries.*—A lease was granted of a farm and tenement, and the quarries of paving and tile-stone in and upon the premises, with liberty and power to open and work the quarries, subject to an annual rent for the premises, excepting the quarries, and to the payment of a royalty for the stone obtained. Out of this demise were reserved and excepted "all timber trees, trees likely to become timber, saplings, and all other wood and underwood, which then were, or which should at any time thereafter be, standing, growing, and being on the premises, and all mines, minerals, &c., which should thereafter be opened and found." And the lease contained a covenant "not to commit any waste, spoil, or destruction, by cutting down, lopping, or topping any timber-trees, or trees likely to become timber, saplings, or any other wood or underwood;" and a power of re-entry for non-payment of rent, or if the lessee, &c., should commit any waste, spoil, or destruction by any of the means or ways aforesaid, and should not perform and keep all and singular the covenants, &c., contained in the lease.

The assignee of the term having cut down and grubbed up certain saplings, wood, and underwood, for the necessary purpose of working a quarry on the demised premises.

*Held*, that the effect of the covenant was, that the tenant should not so cut any of the trees excepted, as that such cutting should amount to an excess of the right which it was intended that he should exercise; and therefore that cutting trees in a manner necessary to a reasonable exercise of the power to get the stone, was no breach of the covenant. *Doe d. Rogers v. Price*, 8 C. B. 894.

3. *For payment of purchase-money for land required for, within limited time after passing of bill.*—A deed executed by the plaintiff and defendant, after reciting that a company had been formed for the purpose of constructing a railway which would pass through the plaintiff's estate, and that an application to Parliament for an act of incorporation was then pending, contained a covenant by the defendant, that within six months from the time of the passing of the proposer's bill, and before

the company should enter upon, take, or use the estate, except for the purpose of setting out and ascertaining the land required, the defendant should pay the plaintiff the sum of 4,000*l.* for the purchase of the estate as thereafter described. There was also a covenant, that, on payment by the defendant of the said sum of 4,000*l.* and interest, after the expiration of six months after the passing of the said bill to the day of payment of the said sum, the plaintiff should convey to the defendant so much of the estate as should be required for the construction of the railway: *Held*, in an action on the covenant, for the non-payment of the purchase-money after six months from the passing of the bill, that the covenant to pay the purchase-money, and that to convey the property, were independent covenants. *Sibthorp v. Brunel*, 3 Exch. R. 826.

Cases cited in the judgment: *Mattock v. Kinglake*, 10 A. & E. 50; *Stavers v. Curling*, 3 Bing. N. C. 368; *Portage v. Cole*, 1 Sand. 520 a, n. 4.

4. *Construction of.*—By indenture reciting that the defendants had appropriated and laid out certain meadows as building ground, the defendants demised a piece of the land to plaintiff, who covenanted to build thereon two houses; and the defendants covenanted, "that, on such buildings being covered in, they would cut good and sufficient roads in, through, and over the meadows, and construct a good and sufficient sewer under the intended roads, for the common use of the plaintiff and all other lessees or tenants of the other portions of the meadows." The plaintiff also covenanted to pay, from a certain fixed period, a certain sum per annum, as his proportion towards the repair of the roads to be laid down: *Held*, that the defendant's covenant was not satisfied by their making a road up to the plaintiff's houses; but that, as soon as those houses were covered in, the defendants were bound to make good and sufficient roads over the whole meadows, as contemplated by the building scheme, although no other houses than the plaintiffs had been built. *Mason v. Cole*, 4 Exch. R. 375.

5. *To pay taxes imposed on demised premises.—Alternative covenant.*—A lessee covenanted that he "would pay all taxes, charges, rates, tithes, or rent-charge in lieu of tithe, dues, and duties whatsoever, as then were, or should at any time thereafter during that demise be taxed, charged, assessed, or imposed upon the said demised premises." *Held*, that the covenant was not confined to rates payable by the landlord, but meant all rates then imposed on the lessee in respect of his occupation, and all future rates which might be imposed on the land itself. *Hurst v. Hurst*, 4 Exch. R. 571.

See *Lease*, 1, 2, 6.

[To be continued.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, APRIL 16, 1853.  
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## PROPOSED LAW REFORMS.

### PROGRESS OF LEGISLATION.

ALTHOUGH a very extensive foundation has been laid for future legal reforms by the numerous Bills now under the consideration of the Legislature, involving changes of great magnitude in the administration of nearly every branch of the Law, it cannot be said that any measure of importance has yet passed, or indeed arrived at so advanced a stage as to justify the conclusion that its details had been considered and obtained the sanction of Parliament.

It does not seem necessary to qualify this observation, by reference to the "Oaths in Chancery Bill," noticed in a subsequent page, or to the Bill introduced by the Solicitor-General "for making further provision for the execution of the office of Examiner of the High Court of Chancery," or to Lord Campbell's Bill "to make further provision for staying execution of judgment for misdemeanours upon giving *bail in error*," although both these measures may be said to have passed the two Houses of Parliament. The Office of Examiners' Bill acquired a species of professional importance from the introduction of a clause—for which we regret to say there are many modern precedents—restricting the appointment of Examiner to the members of one branch of the Profession, and depriving the functionary entrusted with the duty of selection of the power of choosing from amongst the largest class of the Profession. This impolitic infraction of the rights of attorneys and solicitors was met by a protest in the shape of a petition addressed to the House of Lords, which produced an explanation that could hardly be deemed satisfactory

from the Lord Chancellor, and ultimately another office was secured exclusively for barristers of seven years' standing, to which all the members of the Profession were heretofore eligible. In other respects, the Office of Examiners' Bill was of the least possible public importance, and seems to have been framed chiefly with the design of making a suitable provision for Mr. Villiers, the retiring Examiner, who, we doubt not, is by professional as well as political services, well entitled to the advantages secured to him by the operation of this Bill.

The object of Lord Campbell's Bill is merely to secure the render of a defendant to prison, when in cases of misdemeanour imprisonment has been adjudged, and such defendant has unsuccessfully sued out a writ of error. This may be a very necessary amendment of the Act 8 & 9 Vict. c. 68, but it is impossible to regard it as matter of much public importance.

The Bills introduced by the Lord Chancellor and Lord St. Leonards in the House of Lords, soon after the re-assembling of Parliament, and which naturally excited a considerable amount of public attention, have made no progress since they were last noticed. The intentions of her Majesty's Government have been disclosed, however, upon some subjects of great importance upon which Bills have not yet been presented. In regard to *Charitable Trusts*, a matter in which the Legal Profession have on former occasions evinced an anxious interest, Lord John Russell, in his statement on education, intimated, that it was proposed to introduce a Bill by which, as we understood, the administration of charitable trusts to the extent of 30%. would be committed to the County Courts. The Solicitor-General has also unexpectedly, and somewhat informally, announced the



intentions of Government with respect to the *jurisdiction in matters testamentary*.

It is intended, it seems, to abolish the Prerogative Court of Canterbury, and the Court of the Archbishop of York, and to have one Metropolitan Court of Probate exercising jurisdiction throughout England and Wales, and which is to be a branch of the Court of Chancery. The contentious jurisdiction of the Diocesan Courts in reference to matters testamentary is to be transferred without reservation to the Metropolitan Court, and in cases of limited amount to the County Courts; but as we understand the scheme, the Diocesan Courts are to be retained for the purpose of granting probates of wills and letters of administration in ordinary cases, but all the wills proved in those Courts are to be transmitted to the Metropolitan Court for the purpose of registration. The appeal from the Court of Probate is to be to the Privy Council, and, in matters of contentious jurisdiction, the business is to be thrown open to the whole Profession, but the privileges of the present practitioners in the Ecclesiastical Courts are to be preserved to the extent of confining to them, for a certain specified period, the business of proving wills in the common form.

Something has been hinted, rather than said—and not very distinctly—by the Chancellor of the Exchequer as to the intentions of Government with respect to the funds belonging to the suitors in Chancery and Bankruptcy, standing in the names of the Accountant-General and the Accountant in Bankruptcy.

The Solicitor-General's statement, as reported, can only be considered as a sketch of the Government plan for the reform of the testamentary jurisdiction, the details of which have yet to be settled and perhaps determined upon. Upon this subject, as well as the administration of charitable trusts, the statements made in Parliament afford such a clue to the intentions of Government, that the Legal Profession and its organs may be said to be "forewarned," and should be prepared, at the earliest moment after the measures in contemplation are presented to Parliament, to express an opinion upon the effect of the leading provisions. So far as these provisions promise to be attended with benefit to the general community, the Government should be strengthened in proposing them, by the support of the Legal Profession. On the other hand, if the proposed measures contain provisions calculated to operate in-

juriously to the public interests, their tendency should be unreservedly pointed out, and every legitimate influence exercised to procure their rejection or modification. At present, we content ourselves with directing attention to the fact that such measures are "looming" and not very distant.

### CERTIFICATE DUTY REPEAL.

THE second reading of this Bill stands first on the Orders of the Day at the Morning Sitting of *Wednesday, 27th instant*. Our readers should induce their friends in the House to attend at 12 o'clock precisely to support Lord Robert Grosvenor. We presume that the division will soon take place, if the Government should not yield to the majority of the House, expressed on six different occasions on the just principle of the Bill. Argument seems unnecessary, where not a word has been said in support of the justice of the impost. It is a gross mistake to say that other taxes are equally objectionable, and that if the Certificate Duty be repealed, the licences of auctioneers and others must follow. The latter stand upon different grounds, and moreover the dealers and chapmen who require Licences do not ask to be relieved.

We hope, however, that the Chancellor of the Exchequer, on further consideration, will yield to the opinion expressed as well by the former as by a large majority of the present Parliament. Indeed, having intimated a disposition to reduce one of the three Professional Taxes, and to equalize the one in question—by which operation the revenue would lose 50,000*l.*, it is evident the Finance Minister considers the present taxes untenable. Now, in these circumstances, it may be expected that the right hon. gentleman may be induced at the second reading, to consent to a further relief, and, whilst he keeps the two other taxes, remove the heavy annual burthen which alone is objected to.

### OATHS IN CHANCERY BILL.

#### MASTERS EXTRAORDINARY.

THE Bill transforming "Masters Extraordinary into "Country Agents," [or *Commissioners*] for taking Affidavits in Chancery, when exercising the duties of Masters Extraordinary *beyond* ten miles from Lincoln's Inn Hall, or "London Agents" [or *Commissioners*] for taking

Affidavits in Chancery, *within* ten miles from Lincoln's Inn Hall, has been the subject of a conference between the Houses of Lords and Commons. The Bill, as presented to the House of Lords by the late Chancellor (Lord St. Leonards), was printed at length in a former Number (p. 76). It was sent from the Lords to the House of Commons on the 9th December last, and was amended and its bulk materially increased in its passage through the House of Commons where it was read a third time and passed, on the 10th inst. It appears that the House of Lords finally agreed to all the amendments made in the Bill by the House of Commons, with some verbal alterations. The Bill now waits for the Royal Assent, and we propose, in an early Number, to print it amongst the "New Statutes effecting Alterations in the Law," and therefore deem it unnecessary to specify the amendments made in Committee by the House of Commons.

## REMOVAL OF THE COURTS.

### ARE THE COURTS TO REMAIN AT WESTMINSTER?

THERE is an unprecedented ardour at the present time in favour of Law Reform, not directed against the principles of the Law, but against its Forms; not against the Law itself, but against the Mechanism through which it acts.

The most important and the most costly mechanisms (so to speak) of the Law are the Queen's Superior Courts. The Judges of these Courts possess vast learning, their advocates great talents, their long array of Masters, Registrars, Secretaries, and officers, much experience and ability, and whatever tends to cripple the action or diminish the usefulness and the power of a machinery so valuable, so competent under proper conditions to do its work efficiently, destined for purposes so important, and maintained by the nation at so great a charge, must be, in a high degree, prejudicial to the public interests. But such defects and hindrances do exist, and are mainly of two kinds,—the first arising from tedious, complicated, and expensive forms of procedure; the second from defective arrangements, which prevent the various persons concerned in the business of the Law co-operating in the most convenient and effective manner for the ends in view. The former of these evils has already excited general attention; but the latter, which depends for a remedy more particularly on the better position and collocation of the Superior Courts and their offices, has not yet been sufficiently recognised as involving a measure and a means of *Law Reform* not less necessary or less urgent, *as such*, than the correction of judicial forms.

The Westminster Courts are a mile and a half distant from that part of the metropolis in which the Judges, Masters, Registrars, and other numerous officers connected with the subordinate operations of the Courts, have their chambers and offices,—where too are kept the records of the Court proceedings,—where the General Record Office is now being built,—and where all the Bar, and as many as two-thirds of the London solicitors have their business residences. Add to which that such Courts and places of judicial audiences (Judges' and Masters' Chambers, &c.) as are to be found in this *Law District*, and also the offices of the Law and Equity Courts, are not collected together in one spot, but are dispersed and isolated; some in buildings specially constructed for them, but many, here and there, in private houses and in chambers; wherever it has been found possible to obtain for them a species of temporary house-room.

This condition of things is unsatisfactory and full of mischiefs; the remedy for which is the concentration of all the Courts and offices in one spot and under one roof, in the neighbourhood of the Inns of Court:—for the sake of despatch, by economizing the time of the Judges, officers, barristers, and practitioners; for the sake of efficiency and cheapness, through the more easy, punctual, and certain performance of duties by these various persons; for the sake of an increased facility of reference to the Courts and Judges, whereby they might become, under a much improved practice (by that means rendered possible, but without it altogether impossible), far more servicable agents in the administration of the Law than at present; and for the sake, lastly, of enabling the Judges to exercise a supervision over their officers (thus placed in the same building with themselves), whereby abuses, neglects, and defective procedure may be from time to time corrected.

One improvement always opens and points out the way to another, and the degree of increased usefulness of which our Courts are capable is not yet revealed to us. It is quite within possibility that the Court of Chancery, hitherto a bye-word and a reproach to our Law, may become, by improvements carried to the highest point, the faithful and economical executor of one half of the trusts in the kingdom; whilst the other Courts may derive from analogous measures a far more extended and beneficial operation than we can at present form a conception of. But results like these cannot be arrived at or approached until what we have termed the *mechanical* arrangements of the Courts are rendered in the utmost degree perfect; for exactly as in any other public department, such as the General Post Office, or any private undertaking, whether a factory or a farm, so in the working of the Law Courts, a deficient mechanism must produce a disorderly and imperfect action.

This reasoning might be accepted *à priori* as just and conclusive, but the expediency of a change of system rests more securely upon

past experience, and on testimony the most unquestionable.

A Committee of the House of Commons sat in the years 1840 and 1841, and examined many witnesses on this subject. *It was clearly proved that from the remoteness of the Courts of Westminster from the Law district of the metropolis, the business of the Law, not only that connected with the Courts, but all Chamber and other business, is done with more effort, more waste of strength, and at the same time with less accuracy and less expedition than it might and ought to be, and that these evils deteriorate the quality of the suitors' relief, whilst they increase its cost.*

These facts, explained by minute details of the kind of evils of daily and constant recurrence, are now on record upon the authority of such witnesses as Lord Cottenham (at the time Lord Chancellor), Lord Langdale (then Master of the Rolls), Vice-Chancellors Shadwell and Wigram, Mr. Justice Erle, Mr. Baron Martin, the Earl of Devon, Masters Dowdswell and Farrer, the late Mr. Sutton Sharpe, several Masters and Registrars of the Courts, and many eminent Solicitors, who all concurred in the necessity of uniting the Courts and offices in the neighbourhood of the Inns of Court.

This evidence is farther supported by a memorial to the Lord Chancellor, four or five years since, signed by every Equity barrister of any practice (not being Queen's Counsel), protesting against the extreme inconvenience of the Equity Sittings being held during Term time at Westminster Hall.<sup>1</sup> And farther by petitions presented almost annually to Parliament by the Incorporated Society of Attorneys and Solicitors of the United Kingdom, and by a petition in 1840, signed by more than 1,500 London solicitors, including the London representatives of several thousand country solicitors, and praying for the removal of all the Courts from Westminster to the Law quarter of the town.

Since the sitting of the Parliamentary Committee, the alteration of the Chancery system by the appointment of Lords Justices as Judges of Appeal, and the new practice of the Master of the Rolls and the Vice-Chancellors' undertaking ministerial duties at Chambers, having furnished additional reasons for the permanent sittings of these Courts in the Law district. Chamber audiences by the Judges and Masters must of necessity be held in the neighbourhood of the Law Offices and of the Chambers of the practitioners, and accordingly the enormous inconvenience of taking Court business at Westminster, and Chamber business at Lincoln's Inn, has recently, on the remonstrance of the Equity Bar, caused the Lord Chancellor to retain the Equity Sittings at Lincoln's Inn, notwithstanding the Common Law Courts were sitting at Westminster; but

a permanent arrangement of this kind, besides leaving unremedied much of the inconvenience at present existing, would tend to separate the two systems of our Law, instead, as is desired, of their being gradually approximated and harmonised, and would be fatal to all hopes of perfecting our jurisprudence.

Independently, therefore, of the union of the Courts and offices being demanded by the suitors' interests, and by the great object of still farther improving Law procedure, it may be hoped that the obvious necessity of fixing the Equity Sittings permanently in the neighbourhood of the Inns of Court will draw the other Courts there also.

Another circumstance of no less urgent character may probably come in aid. A statement is subjoined, showing that fifteen Courts are at this moment necessary for the superior tribunals, together with upwards of eighty rooms for accessory uses, which is the very least accommodation that would satisfy the wants of the present moment. But seeing that during the last fifty years the number of Courts has nearly doubled, space must also be secured for future wants, and the architect must therefore provide at least a fourth more than at present needed. The requirements of the Parliament Houses will, however, leave so little spare ground for the construction of Courts in connexion with them, that Sir Charles Barry must at once admit the impossibility of allotting to the Courts the minimum of space thus requisite; and it would indeed be exceeding the shortsightedness and blundering so frequently heretofore conspicuous in our public buildings, if the obstinately and irrationally persisting in a site so fraught with mischief, should be added to the folly of forcing Procrustes-like, the Houses and the Courts into a space inadequate for both!

If it were possible to build these Courts in connexion with Westminster Hall, it would be also necessary to provide Courts for the Equity Judges at Lincoln's Inn,—that is, two sets of Courts and accessories for the same Judges! besides perpetuating those great inconveniences against which the Equity Bar have so often protested, and the host of other evils detailed and deprecated in the evidence already before Parliament.

But, it may be asked, are there no reasons for retaining the Courts at Westminster? THERE ARE NONE. Attachment to Westminster Hall used to be spoken of, but it is now scarcely mentioned as an argument, and it will not prevail against common sense and the public good.<sup>2</sup>

<sup>2</sup> Chief Justice Tindal was invited to give evidence before the Committee, and negatively confirmed the general testimony by replying that, "He could say nothing in favour of Westminster Hall." But the Common Law Judges and Queen's Counsel know the least about the evils of that place. It is those in the Professions, whose heaviest work is in Chambers, and whose nights must atone for

<sup>1</sup> This memorial, with its signatures, is to be found at length in Mr. P. Cooper's Reports.

A more formidable resistance to the change might be expected from those members of the Bar and the Bench who are also members of the Legislature; and who may find it agreeable to be near the Parliament Houses during the six or seven weeks (for it is not more) when Parliament and the Courts are sitting simultaneously at Westminster; but this personal gratification (it scarcely amounts to a convenience) involves no public interest whatever, and, therefore, will not be urged against a measure largely beneficial to the suitors and the public.

With more show of public ground it may be said that the proximity of the Courts is advantageous to the Parliamentary Committees; but besides that the leading Parliamentary Counsel confine themselves exclusively during the Session to this particular kind of business, it is only during Easter and Trinity Terms (about six weeks) that this supposed convenience obtains, and it is very certain that the Committees have no difficulty in attracting Counsel during the rest of the Session.

As to appeal business in the House of Lords, it was proved before the Committee that in the year 1839, which was taken as an average year, the House sat upon appeals only 22 days, on which some or other of the Courts were sitting simultaneously at Westminster, but out of these, the Equity Courts were sitting there only 14 days. The year 1840 gave similar results. On the other hand the aggregate daily sittings of the Courts at Westminster (productive of the inconvenience complained of as affecting the whole business of the Superior Courts) amounted to 713 sittings. If we add for the sittings of the three Courts of Equity, since instituted, the number would be 902, or 41 days of ordinary Court sittings as compared with one day of appeals.

To which is to be added, that economy of time and expense, the objects of the suggested change, are less essential in appeals to the House of Lords, and in Parliamentary Committee business, than in the ordinary administration of justice by the Queen's Courts.

As therefore the Courts at Westminster require extension or reconstruction at the present time, and as no adequate room for them can be found on or adjoining to their present site,—as the Courts and offices in and near the Inns of Court equally require reconstruction and collocation,—as the evidence shows no necessity for the retention of the Courts at Westminster, whilst it exhibits vast evils in their being so remote from their most natural and fitting situation,—as the removal of these evils will be therefore in itself a *Law Reform* of great value,—as moreover the highest improvement in the working of the Courts cannot be effected so long as their mechanical arrangements are imperfect, or so long as the Courts and offices are dispersed in various places,—

days and hours miserably wasted in Westminster Hall, whose hearts sicken at the very name.

as the Vice-Chancellors *must* sit permanently near the Inns of Court, and yet *must not* be permanently separated from the other Judges,—the only conclusion to be drawn is that which has been before stated, namely, that the whole of the Courts and offices should be concentrated in one spot, under one roof, in the neighbourhood of the Inns of Court.

Let the principal be now settled; the site to be selected is a matter for after consideration.

STATEMENT OF ACCOMMODATION REQUIRED AT WESTMINSTER HALL, IN CASE THE COURTS ARE NOW RE-CONSTRUCTED ON THAT SITE, *without allowing for any future increase.*

#### *Number of Courts.*

For each of the Common Law Judicatures, a Court for Banc business, and one for Term Nisi Prius, with an additional one as a Motion or Practice Court for the Queen's Bench, making *Seven Courts.*

For each of the Equity Courts, one Court, viz., for the Lord Chancellor, Lords Justices, Master of the Rolls, and the three Vice-Chancellors, making *Six Courts.*

For the business of Doctors' Commons (Marriage and Probates,) shortly to be reformed and annexed to the Queen's Courts, *Two Courts.* Total 15 Courts.

#### *Number of Rooms for Accessory uses.*

For each of the three Common Law Judicatures, two rooms for the Judges, one each for the Masters, Judges' clerks, witnesses, jurymen, and attendance, making 21 rooms.

For the joint use of these Courts:—a library, two robing rooms, six consultation rooms, two barristers' rooms, attorneys' room, making 12 rooms.

For each Equity Court, a room for the Judge, secretary, registrar, and attendant, making 24 rooms.

For joint use of Equity Courts:—a library, two robing room, six consultation rooms, two rooms for the Bar, solicitors' room, and witnesses' room, making 13 rooms.

For the new Courts for Probate, &c., *eight rooms.*

For refreshment rooms, rooms for persons in charge of the Courts, for special purposes, and for offices, &c., say at least *six rooms.* Total 84 rooms.

AN OLD LAW REFORMER.

#### NOTICES OF NEW BOOKS.

*The Modern Practice in Chancery, containing all the Statutes and Orders from the Trustee Relief Act (10 & 11 Vict. c. 96), to the General Order of 24th Dec. 1852; with explanatory Notes, and all the reported Cases to 1853.* By SAMUEL SIMPSON TOULMIN, Esq., Barrister-at-Law. London: Sweet, 1853.

MR. TOULMIN clearly and accurately states the scope of his work in the Preface thereto, from which we make the following extracts :—

"The alterations which have from time to time been made in the Practice of the Court of Chancery during the last few years, have been extensive and important; and the main object of the present work is to show at one glance all the recent alterations affecting any particular head of practice. With this view, the modern enactments and regulations now in force will be found classified under separate heads, and as nearly as practicable according to the proceedings in a suit.

"In order to make the work more extensively useful, it was thought desirable that it should not be confined to the Statutes and Orders of 1852, and the Author has taken for its commencement the Trustee Relief Act, of 1847, not only on account of the great practical utility of the Act,<sup>1</sup> but also on account of its connection with the more recent alterations relating to the summary remedies by and against trustees and executors. The work contains all the subsequent Statutes and Orders now in force relating to the Practice of the Court, and all the reported decisions down to the year 1853. It should be stated, however, that the Winding-up Acts are not included, inasmuch as they were not considered as coming within the scope of a work treating only of the ordinary practice of the Court.

"For the convenience of reference and citation, the sections of Statutes and the Orders in the text (except formal words of enactment, &c.) are given verbatim, and may readily be found with the assistance of the Tables of Statutes and Orders which follow. In some few instances, with a view to save useless repetition, in cases where a section or an Order related to more than one subject, and could be conveniently divided, so much of it only has been inserted under each head as was applicable to the particular subject."

The book is divided into 31 chapters, or "classes" as the author describes them, viz. :

1. The Judges of the Court.
2. The Officers of the Court.
3. Jurisdiction.
4. Parties to Suits.
5. Bills and Claims.
6. Interrogatories for the examination of Defendants to Bills and Claims.
7. Pleas, Answers, Demurrers, and Exceptions for insufficiency of Answers.
8. Motion for Decree.
9. Production of Documents.

<sup>1</sup> See the Chancery Commissioners' Report of the 27th January, 1852.

10. Interrogatories for the examination of the Plaintiff.

11. Dismissal of Bill for want of Prosecution.

12. Joining Issue.

13. Evidence.

14. Setting down Causes, &c.

15. Decrees and Orders.

16. Rehearings and Appeals.

17. Proceedings in the Judges' Chambers.

18. Proceedings in the Masters' Offices.

19. Injunction.

20. Receiver.

21. Revivor and Supplement.

22. Exceptions for Scandal.

23. Election to proceed at Law or in Equity.

24. Claims.

25. Special Cases.

26. Summary Proceedings by and against Executors, Administrators, and Trustees.

27. The Trustee Acts, 1850 and 1852.

28. Office Copies and other Copies.

29. Time.

30. Costs.

31. Fees and Stamps.

The work is skilfully arranged and well adapted to assist the practitioner in conducting suits and proceedings under the extensive alterations effected both in the jurisdiction and mode of procedure in the several departments of the Court. It is scarcely possible at present to form a complete book of practice, comprising what remains of the old system with all that has been enacted or ordered, down to the present time. No short period must elapse before the various practical directions of the New Statutes and Orders of Court can be fully construed and expounded, as they occur in the details of Chancery Procedure.

*The Code of Practice of the High Court of Chancery.* By THOMAS KENNEDY, a Solicitor of the Court. Vol. II. Part II., containing *The General Orders* from 7th August, 1852, to March, 1853; *Forms*, Alphabetical Table of *Fees* payable by Stamps, and a copious *Index* to the whole Volume. London: Butterworths. 1853.

Referring to the remarks in our last Number (p. 456 *ante*), on Mr. Kennedy's work, we proceed to place before our readers the Time Table he has compiled, and which cannot fail to be highly useful in conducting the various proceedings in the Court of Chancery :—

It is as follows:—

**"TIME,**  
*enlarging or abridging*—power of Court or Judge to enlarge or abridge, not affected by Orders of 7 August, 1852. the like by Orders of 16 October, 1852. applications for [to have priority before the Master].  
 [may be heard by Judges, notwithstanding 3 & 4 Wm. 4 superseded by 26 sect. of 15 & 16 Vict. c. 80].  
 to be made to Judges at Chambers.  
 notice affixed at Judges' Chambers to that effect.  
*addition to*, for not delivering copies.  
*explanation of term* 'clear days.'  
*summons originating proceedings at Judges' Chambers*—to be served seven clear days before the return.  
*taking an account of debts under 13 & 14 Vict. c. 35*—no order to be made for, until after the expiration of a year from the death of deceased person.  
*motions for the allowance or disallowance of claims of persons coming in*, to be made within 14 days after filing of the report.  
*on special cases*, to be governed by practice as to bills.  
*for showing cause on writ of summons*, to be 14 days at the least after service.  
*caveat* to be entered within eight days after time limited for appearance to writ of summons to revive claim to prevent revivor.  
*bills*—printed copy of, to be filed within 14 days after filing of written copy in cases of an injunction *ne exeat regno*, or making an infant a ward of Court.  
*for answering, pleading, or demurring*—when answer not required within the time allowed for demurring alone to a bill, viz., 12 days after appearance.  
*plaintiff to file interrogatories when he requires an answer* within eight days after the time limited for appearance.  
 after the time expired, leave of the Court must be obtained.  
*for delivering copy of interrogatories*—if defendant appears in due time, within eight days after time allowed for such appearance.  
 if defendant does not appear in due time, at any time after time allowed for appearance, but within eight days after appearance.  
*defendant to plead, answer, or demur*—when answer not required by plaintiff within the time allowed for demurring alone to a bill, viz., 12 days after appearance.  
 further term may be obtained, if required, by leave of the Court.  
 when answer required within 14 days from delivery of interrogatories.  
 Court may enlarge time from time to time.  
*exceptions for scandal or insufficiency*—the

**"TIME, (continued)**

times of vacation not to be reckoned in time for filing or setting down, except where defendant entitled to apply for order to elect.  
*exceptions for scandal*—to be set down within six days after filing.  
*exceptions to answer for insufficiency*—to be filed within six weeks after answer.  
 not to be set down before expiration of eight days from filing, unless in a case of election [or where the common injunction depends on their allowance].  
 to prevent setting down, defendant must submit to them within eight days from the filing.  
 to be set down [the day after they are shown for cause against dissolving an injunction].  
 in cases of election, within four days after notice from defendant.  
 in other cases not before eight days, but within 14 days from filing.  
 old exceptions within 14 days after further answer.  
*for answering after exceptions*—defendant (not in contempt) submitting to exceptions not set down, has three weeks for further answer.  
 where he submits after they are set down, or the answer is held insufficient, the Court may appoint a time.  
 after first or second answer held insufficient, the Court may appoint a time.  
*defendant may apply for order to elect*—where answer not excepted to or set down on former exceptions upon expiration of eight days after answer filed.  
 if plaintiff does not set down exceptions within four days after notice.  
*defendant to file interrogatories for examination of plaintiff*—where defendant is required to answer, not until after a sufficient answer.  
*defendant may apply for production of documents by plaintiff*—where defendant is required to answer bill, not until after sufficient answer, unless Court order to the contrary.  
*plaintiff to answer interrogatories filed by defendant*—as if he had appeared to a bill of discovery on day of filing.  
*motion for decree*—may be made at any time after time allowed for answering has expired and before replication.  
 one month's notice to be given.  
 affidavits to be filed before service of notice.  
 defendant to file affidavits in answer within 14 days after service of notice of motion.  
 plaintiff to file affidavits in reply, within seven days after the expiration of such 14 days.  
 no further evidence without leave of the Court.  
*dismissal of bill for want of prosecution, when defendant not required to answer*—he

## "TIME, (continued)

may move for after the expiration of three months from appearance.

*giving notice as to the mode of taking evidence*—the plaintiff is to give such notice within seven days after issue joined.

defendant to give notice within 14 days after the expiration of such seven days.

*evidence*—notice of reading at the hearing affidavits filed *before issue joined*, to be given within one month after issue joined.

*closing evidence*—to be closed nine weeks after issue joined, whether taken orally or by affidavit.

*cross-examination of witness having made an affidavit*—may be had within one month after the expiration of nine weeks allowing for closing evidence.

forty-eight hours' notice to be given to party filing affidavit.

*re-examination of such witness*—immediately to follow cross examination.

*discharging order to revive or carry on suit*—where no disability except coverture within 12 days after service of order.

in case of disability, other than coverture, within 12 days after guardian appointed.

*adding to decree*—party served with notice to apply within one month.

*appeals from decrees, orders, or dismissals*—to be set down, and notice served within five years from date.

Lord Chancellor or Lords Justices may enlarge time under special circumstances.

*enrolment of decrees*—not to be enrolled after six calendar months without special leave.

after that time order to be obtained by consent, or upon notice, or conditional, unless cause shown within 28 days after service.

no enrolment of decree allowed after five years from date.

Lord Chancellor or Lords Justices, under special circumstances may enlarge this time.

*caveats*—to be prosecuted within 28 days after docket of decree left for signature.

*order of reference*—to be brought into the Master's Office within 10 days after it is entered.

*serving summons for proceedings at Judges' Chambers*—two clear days before the return.

on return of first summons, time to be fixed for taking each proceeding.

*creditors or claimants coming in in pursuance of advertisements*—time to be fixed for adjudication.

hearing may be adjourned.

claims to be entered at Judges' Chambers within the time specified in.

time may be fixed for closing evidence on where claim not previously entered, may be entered four clear days before adjournment day, if no certificate of debts made.

## "TIME, (continued)

after time fixed no claims to be received except as before provided.

*certificate of chief clerk*—opinion of Judge to be taken after proceeding concluded, within four clear days after it has been signed by chief clerk.

summons for the purpose to be taken out within the four clear days after such signature.

on default, same to be approved and signed by Judge.

application by summons or motion to vary certificate, signed by Judge, to be made within eight clear days after the filing.

*setting down cause for further consideration*—to be set down by plaintiff's solicitor, or person having conduct of cause, after the expiration of eight days and within 14 days from filing certificate or report. may be set down by plaintiff or any other party after the expiration of such 14 days.

not to be put into the paper until after the expiration of 10 days from setting down. notice of setting down to be given six days before the day for which cause marked for further consideration.

*copies*—to be ready to be delivered 48 hours after delivery of request and undertaking.

on *ex parte* applications for injunctions of *ne exeat regno*, to be delivered immediately.

if not furnished within two clear days from the application, copy may be procured from the office.

in case of neglect to furnish for such two clear days, addition to be made to time of party requiring copy.

*references to conveyancing counsel*—rotation of, to be marked between 11 and 1 at registrar's office."

We have thus enabled our readers to form some judgment for themselves of the utility of Mr. Kennedy's work. It evinces great labour, care, and a minute and comprehensive knowledge of the practice as it *was* and as it *now is*. The two Volumes form a very complete work on the Law and Practice in Chancery; but the second Volume may be used as a distinct work containing all the extensive alterations, both Parliamentary and Judicial, effected in the last year and carried down to the present time.

## LAW OF ATTORNEYS.

## TAXATION OF COSTS AFTER PAYMENT.

AFTER the payment of a solicitor's costs an order of course for taxation is irregular; and the rule, that on applications for orders

of course all material facts must be stated, will be strictly adhered to.

In an arbitration, certain costs were directed to be paid, and the amount being moderated by the arbitrator was paid by the party liable. The client afterwards obtained an order of course to tax his solicitor's bills, but suppressed some of the facts. An application was then made by the solicitor to the Master of the Rolls to discharge the order; and his Honour in delivering judgment said:—

"I have no doubt that there were circumstances in this case which the respondents were bound to mention when they applied for the order of course for taxation; and that if they had been stated, the secretary would have been of opinion that the case was one which ought to have been mentioned to the Court.

"The circumstances are these:—There was a contest before the arbitrator, who thought that *B.* and *M.* were entitled to the costs and expenses properly incurred in the matter of this arbitration; and accordingly a bill of costs and expenses was taken in, amounting to 41*l.* 13*s.* It is sworn, and not denied, that the arbitrator then disallowed two items of 47*l.* and 36*l.*; the first in respect of the attendance of witnesses, and the second for making out observations on the case. These two sums, amounting to 83*l.*, and another sum of 17*l.* making together 100*l.*, were taken off, and the bill, thus reduced to 31*l.* 13*s.*, was paid by the Poor Law Guardians.

"The clients in the arbitration, without stating any one of these circumstances, obtained an order of course to tax the bill. Assume these two items to be out of the question, and that the Taxing Master should tax off another sum of 25*l.*, surely those who have paid the bill, and not the clients, ought to have the benefit of this disallowance.

"I express no opinion further than this, that there was a substantial question between the parties whether this bill had been paid, for if it had been paid by anybody, it was a case in which an order of course to tax the bill could not properly be obtained, but a special application ought to have been made for that purpose. The circumstances ought to have been submitted to the attention of the secretary, and I have no doubt that if they had been, he would not have granted an order of course. Admitting that the clients may be entitled to a special order upon a special application, as to which I express no opinion, for the Court may then have to express its opinion whether there has been payment or not, I must follow the practice of Lord Langdale, who, pointing out the analogy between orders of course and *ex parte* injunctions, discharged all orders of course obtained upon a suppression of any material facts, even though it should appear, upon the motion to discharge it, that the party

would be entitled to the order on a special application.

I am of opinion that it is very proper to adhere strictly to the rule, that upon an application for *ex parte* orders no material circumstance should be suppressed, and on that ground alone I must discharge this order. *In re Winterbottom*, 15 Beav. 80.

## LAW OF EVIDENCE.

### PRESUMPTION OF DEATH.

A MR. G. CREED died in 1838. Previously thereto, namely, in 1829, G. Creed, the younger, became bankrupt, and in the same year left England, and went to New York. In 1831, the brother-in-law of Creed the younger, received a letter from a stranger, dated 16th June, 1831, from New York, soliciting aid on behalf of Creed the younger, describing him as then having taken the name of G. Cooke. About three months after the receipt of this letter, the wife of G. Creed wrote to him by the name of G. Cooke, and sent the letter by a friend to New York, who then made inquiries for him but without being able to obtain any information, and such letter was afterwards brought back to his wife in England. Some time afterwards it was reported by a Mrs. Colonel Howard, that G. Creed had been seen by her son, in 1831, at New York, in the company of some strolling players, and in great distress. These allegations were supported by the affidavits of the petitioners only; and it did not appear that any of the family had made any other inquiries. The question was, whether G. Creed, the younger, was to be presumed to be dead, and if dead, whether he died within six years and eight months from the 16th June, 1831; in which case, he would have died before the testator, and the petitioners, as his issue, would take; or whether he must be presumed to have lived for seven years from the 16th June, 1831, in which case he would have survived the testator, and taken an interest; and then his assignees would be entitled.

Vice-Chancellor Kindersley said, that unless the parties could agree in stating that no further information could be obtained, there had been no sufficient inquiry to justify any order. The petitioners had done nothing in the way of effectual inquiry. As the matter stood, the Court would refuse to give the fund to the petitioners without further inquiry. The case was finally arranged out of Court. *In re Creed*, 1 Drewry, 235.



## ADMISSION OF ATTORNEYS IN CANADA.

THE large number of attorneys who from time to time have left England for the Colonies, induced us last year to state the Rules and Regulations relating to Admission in the Courts in *Australia* (see 43 L. O. 298). It appears that a different rule prevails in *Canada*, and we therefore lay before our readers the Acts of the Canadian Legislature on this subject.

By the 2 Geo. 4, sess. 2, c. 5, s. 3, (A. D. 1822) it is enacted, "That the 6th clause of the Act 37 Geo. 3, c. 13, passed in the 37th year of his late Majesty's reign, shall be and the same is hereby repealed; and that from and after the passing of this Act, no person shall be admitted by the Court of King's Bench to practise as an attorney in this province, unless upon an actual service under articles for five years, with some practising attorney in this province: provided nevertheless, that nothing in this Act contained shall extend or be construed to extend to any student now serving with any person in this province, duly authorised to take a clerk, and who shall have been proposed or entered in the books of the Law Society as a student."

By the 4 Wm. 4, sess. 4, c. 9 (A. D. 1834), the Attorney or Solicitor-General were declared admissible as attorneys without having served with an attorney of this province.

By 7 Wm. 4, sess. 1, c. 2, s. 22 (A. D. 1837), which was passed to establish a Court of *Chancery* in the province, it is recited, that it may be beneficial to facilitate the admission of a limited number of persons experienced in the practice of Courts of Equity in the United Kingdom, to practice as solicitors in this province, it was therefore enacted, "That it shall and may be lawful for the Vice-Chancellor to admit persons to be solicitors of the said Court, (not exceeding six in number,) upon their producing evidence to his satisfaction of their having been respectively admitted and sworn as solicitors of the High Court of Chancery in England or Ireland, and of their having been in actual practice in such Court as solicitors; provided always, that the Vice-Chancellor shall not admit any such person to be a solicitor, until he shall have satisfied himself in respect of his competent knowledge of the law and practice of the High Court of Chancery in England or Ireland, and also in respect to his moral character."

By 7 Wm. 4, sess. 1, c. 15, s. 1 (A. D. 1837), it is provided, "That from and after the passing of this Act, it shall be lawful for the Court of King's Bench in its discretion, to admit any duly admitted attorney or solicitor of her Majesty's Courts of Law or Equity in England or Ireland, or any writer to the signet, or solicitor

before the higher Courts in Scotland, to practise as an attorney of the Court of King's Bench in this province, upon sufficient proof being given that such attorney, solicitor, or writer to the signet, aforesaid, has served under articles of clerkship, to a practising attorney in this province for the space of three years; or if such attorney, solicitor, or writer to the signet, or solicitor before the higher Courts, shall have taken a degree at any of the Universities in the United Kingdom, then for the period of two years only, anything in the said recited Act to the contrary notwithstanding."

And the 3rd section recites, that "it may happen that persons who have taken or may take the degree of B.A., or of law, or of M.A., in either of the Universities of the United Kingdom of Great Britain and Ireland, or who may thereafter take such degree in the University of King's College in this province, may be hereafter desirous of becoming attorneys or solicitors, but may be deterred by the length of service required for that purpose by the said recited Acts, and it is expedient that the admission of such graduates should be facilitated, in consideration of the learning and abilities requisite for the taking such degree: It is therefore enacted, That from and after the passing of this Act, in case any person who shall have taken, or who shall take the degree of B.A., or B.L., or of M.A., in either of the Universities of the United Kingdom of Great Britain and Ireland, or who shall take such degree in the University of King's College in this province, shall at any time after he shall have taken or shall take such degree, be bound by contract in writing to serve as a clerk for and during the space of three years, to a practising attorney in this province, and shall faithfully serve for three years in pursuance of such contract, he shall on due proof of such service, be entitled to be admitted and sworn an attorney, in the same manner, and of the same Court or Courts, and as fully and effectually to all intents and purposes, as if such person had served under articles for the term of three years."

By 47 Geo. 3, sess. 3, c. 5 (A. D. 1807), superseding 43 Geo. 3, c. 8, it is enacted "That from and after the passing of this Act, it shall and may be lawful for all and every person now authorised to practise the profession of the law in this province, or who shall be hereafter duly authorised to practise as aforesaid, to take and have four clerks at one time, and no more, any former law or regulation to the contrary notwithstanding."

By 2 Geo. 4, sess. 2, c. 1, s. 44 (A. D. 1822), it is provided, "That after 12 months from the passing of this Act, no attorney of this Court being a merchant, or in anywise concerned by partnership, public or private, in the purchasing and vending of merchandize in the way of trade as a merchant, shall be permitted to practise in the said Court during the time he

may be such merchant or so engaged as aforesaid, nor until *twelve months after he shall have ceased* to be such merchant or so engaged, as aforesaid."

## SELECTIONS FROM CORRESPONDENCE.

## ACTION AND INDICTMENT FOR SAME INJURY.

IN answer to the Law Students of Rotherham upon the question, "whether a civil action can be maintained concurrently with criminal proceedings in respect of the same cause?" we cannot do better than direct their attention to the following passages in Mr. Stephen's New Commentaries, vol 3, p. 456 (3rd ed.) :—

"Wherever extraordinary damage is sustained by an individual, he has in general a right of action as for redress of a civil injury, though the case may in its circumstances also amount to a crime. Thus, if by means of a ditch dug across a public way, which is a common nuisance, a man or his horse suffer damage, which is not common to others, the party shall have his action.<sup>1</sup> And so in the case of unlawful violence done to the person, though that always amounts in contemplation of law to a crime, and, under particular circumstances, even to a felony, yet the party injured is entitled to his civil remedy. But even here this distinction is to be observed, that in the case of a felony the remedy for the private

injury is *suspended* until the sufferer has fulfilled his duty to the public by prosecuting the offender for the public crime;<sup>2</sup> though for a mere misdemeanour, such as assaults, batteries, libels, and the like, the right of action is subject to no such impediment." And see also vol. 4, p. 80.

<sup>1</sup> *Crosby v. Leng*, 12 East, 409; 7 & 8 Geo. 4, c. 29, s. 57; *White v. Spettigue*, 13 Mee. & W. 603.

## NOTES OF THE WEEK.

## DISTRINGAS AT BANK OF ENGLAND.

THE number of orders of distringas which have been lodged at the Bank of England during the last five years has been 3,593, of which 331 were warned off, and on such warnings there have been 31 injunctions obtained.

The number of accounts of stock in the hands of two or more holders is 117,828, out of the 264,479 accounts of stock.—From the *Parliamentary Return printed 5th April, 1853*.

## HERTFORDSHIRE COUNTY COURT.

HER Majesty in Council was this day (1st April) pleased by and with the advice of her Privy Council, to order and it is hereby ordered, that from and after the 31st day of May, 1853, the parish of Northaw, now in the district of the County Court of Hertfordshire, holden at *Saint Albans*, shall be in the district of the County Court of Hertfordshire, holden at *Barnet*.—From the *London Gazette* of the 12th April.

<sup>1</sup> 3 Bl. Com. 220; *Wilks v. Hungerford Market*, 2 Bing. N. C. 281.

RECENT DECISIONS IN THE SUPERIOR COURTS,  
AND SHORT NOTES OF CASES.

## Lord Chancellor.

*In re Hornby*. April 13, 1853.

CERTIFICATE OF BANKRUPTCY.—PROOF OF  
IN FOREIGN COURT.

*A certificate was granted for the purpose of proving a bankruptcy in one of the Courts at New York, U. S., that the Commissioner who signed the certificate in bankruptcy and the Registrar were officers of this Court.*

Hadden appeared in support of this application for a certificate to prove the bankruptcy of this person which was required in one of the Courts at New York, U. S.

The Lord Chancellor said, a certificate might be taken that Mr. Fane, who had granted the certificate, and Mr. Campbell, the Registrar in Bankruptcy, were officers of this Court.

April 13.—*Thornhill v. Thornhill*—Application for discharge of party in contempt to be made to Lords Justices.

— 13.—*Truill v. Bull*—Part heard.

## Master of the Rolls.

*Page v. Page*. March 8, 18, 1853.

## MARRIED WOMAN.—SUING IN FORMA PAUPERIS WITHOUT NEXT FRIEND.—NOTICE OF MOTION.

*Held, that an order on behalf of a married woman to sue in forma pauperis without the intervention of a next friend, cannot be obtained without notice of the motion being served on the defendant, and where such an order had been obtained ex parte, it was discharged, but without costs.*

*R. Palmer and W. Hislop Clarke* appeared in support of this application, on behalf of the defendant, to discharge an order which had been obtained *ex parte* by the plaintiff, a *feme covert*, for leave to file this claim *in forma pauperis* without a next friend. The defendant had appeared.

*T. H. Terrell* for the plaintiff, *contra*.

*Cur. ad. vult.*

The Master of the Rolls said, that the order was irregular, as no notice of the motion for leave to sue *in forma pauperis* had been served on the defendant, and it was accordingly discharged, but without costs.

*Esparle Evans, in re Lewin.* April 12, 1853.

ORDER FOR TAXATION OF COSTS. — TRUSTEES.—IRREGULARITY.

*Orders for the taxation of costs were discharged on the ground of irregularity, where they had been obtained on the application of one only of the trustees.*

THIS was an application to set aside two orders, which had been obtained for the taxation of costs on the ground of irregularity—the order having been made on the application of one only of the trustees.

*Morris* in support.

*Willcock*, contra.

The Master of the Rolls said, the objection must prevail, and the orders were accordingly discharged.

April 12.—*Hele v. Lord Bezeley*—Judgment on exceptions and costs.

—13.—*In re Manchester New College*—Judgment on petition under 52 Geo. 3, c. 101, and as to costs.

Vice-Chancellor Kindersley.

*In re Sharpley's Trust.* April 13, 1853.

TRUSTEES' ACT, 1850.—ORDER ON PETITION BY SOME OF CESTUIS QUE TRUSTENT.—PARTIES.

*Held, that under the 15 & 16 Vict. c. 86, s. 51, the Court has power to make an order for the re-conveyance of property mortgaged, the equity of redemption in which was vested in trustees for sale, under the 13 & 14 Vict. c. 60, although the petition is presented by four only out of the seven cestuis que trustent interested therein.*

THIS was a petition on behalf of four out of seven cestuis que trustent, for an order under the 13 & 14 Vict. c. 60, for the re-conveyance of certain mortgaged property, the equity of redemption in which was vested in trustees with a power of sale.

*Renshawe* in support, submitted the petition sufficiently represented the parties interested.

The Vice-Chancellor said, that although under the 13 & 14 Vict. c. 60, it was necessary to have all the parties beneficially interested before the Court, under the 15 & 16 Vict. c. 86, s. 51, the Court was empowered to adjudicate on questions arising between parties, notwithstanding that they might be some only of the parties interested in the property, respecting which the question may have arisen, and the order was therefore made.

April 12.—*Pennell v. Roy*—Judgment as to costs.

Vice-Chancellor Stuart.

*Tucker v. Hernaman.* April 13, 1853.

ADMINISTRATION CLAIM.—BANKRUPT TESTATOR.—SUBSEQUENT CREDITORS.—JURISDICTION.

*A commission in bankruptcy had been issued against a testator in 1815, but he had never obtained his certificate, and assignees had not been chosen upon the death of these originally appointed. He had carried on his business as an attorney and solicitor ever since 1817, and had paid several creditors who applied to him. A district Court of Bankruptcy, after his death, appointed the defendant assignee, and made an order for claims to be brought in and for payment thereof, and for the residue to be paid over to the executors: Held, that, notwithstanding such order, this Court had jurisdiction on an administration claim to direct the usual inquiries as to the real and personal estate, and a declaration was also made that the subsequent creditors were entitled to priority over the creditors under the bankruptcy.*

THIS claim was filed for the administration of the estate of Mr. A. Elswood, of Bungay, Suffolk, who by his will, dated in July last, appointed the plaintiff and a Mr. Templer, his executors and trustees, and he directed them to take possession of all the residue of his property and effects, and after payment thereof of certain bequests thereby given and of his debts, to divide and pay the same to those who were lawfully entitled thereto as they should in their discretion think fit. It appeared that a commission of bankruptcy had issued against the testator in 1815, but that he had never obtained his certificate, and that no assignees had been chosen upon the death of those originally appointed. The testator was in practice as an attorney and solicitor at Bungay from the year 1817 to his death, and had paid several of his creditors who applied to him. The defendant was appointed assignee shortly after his decease, and took possession of some of his property and sold the good will of the business with the concurrence of Mr. Templer. In October, the Court of Bankruptcy at Exeter made an order for the publication of notice to all parties claiming to be creditors to send in the particulars of their claims to the defendant within a month, and for payment thereof out of the moneys to be got in under the bankruptcy, and for the application of the residue in payment of any debts to be proved, and the remainder to be handed over to the executors. The executors admitted assets.

*Bacon* and *Schomberg* for the plaintiff; *Malins* and *J. V. Prior, jun.*, for the defendant; *J. V. Prior* for Mr. Templer.

The Vice-Chancellor said, that the subsequent creditors were entitled to payment of their debts out of the estate before the creditors under the bankruptcies, and the jurisdiction of this Court was not ousted by the Commissioner ordering subsequent creditors to come in, and an account would be directed of the real and personal estate, with a declaration to that effect.

*Lucas v. James.* April 13, 1853.

MASTERS' ABOLITION ACT.—SANCTION OF COURT TO CONVEYANCE.—REFERENCE TO CONVEYANCING COUNSEL.

*Where a deed of conveyance from one set of trustees to another, which had been executed during the progress of a suit, was long, and the parcels were set out with great particularity, the Court refused to sanction it without a reference to a conveyancing counsel, under the 15 & 16 Vict. c. 80, s. 40.*

THIS was an application to obtain the sanction of the Court to a conveyance, which had been executed during the progress of a suit, of freeholds and leaseholds, from one set of trustees to another, without a reference to the conveyancing counsel, under the 15 & 16 Vict. c. 80, s. 40.

*Rogers and Prendergast* for the respective parties, citing *Blaxland v. Blaxland*, 9 Hare, app. lxviii.

The Vice-Chancellor said, as the deed was long and the parcels were set out with much particularity, the case was one which should be referred to one of the conveyancing counsel, and a reference was accordingly made.

April 12.—*Harris v. Bain*—Motion for injunction to stand over, with liberty to proceed as advised.

—13.—*Attorney-General v. May*—Reference to Chief Clerk to certify as to granting building leases of charity property, and as to parts to be so leased.

**Vice-Chancellor Wood.**

*Arundell v. Atwell and others.* April 12, 1853.

MINING COMPANY.—COST-BOOK PRINCIPLE.—DISSOLUTION.—RECEIVER.

*Quere, whether a partner in a mine conducted on the cost-book principle can obtain on the hearing a dissolution and the appointment of a receiver and manager, on the ground of the concern being mismanaged and in an insolvent state; but semble, an order for such manager and receiver will not be made on an interlocutory motion. Where, however, the charges made by the bill as to misconduct were negatived by the answers and affidavits, a motion for a receiver was refused, with costs.*

*Daniel and W. H. Terrell* appeared in support of this motion for the appointment of a receiver and manager of the Avon Consols Mine, Devonshire. It appeared that the mine was conducted on the cost-book principle,—the several partners being bound by the majority, and with a proviso for retirement if dissatisfied, and for settlement of the accounts. The plaintiff had taken shares in Aug. 1852, upon the defendants' representations of the affairs of the mine, and he filed this bill against the principal manager and trustee and others, charg-

ing fraud and misrepresentation in such statement, and that the funds had not been properly applied and the company was insolvent, and seeking an account and the dissolution of the company. It appeared, however, from the defendants' answers and affidavits that the plaintiff had been present at several meetings and had not objected to a call which had been made, nor as to the management of the mine.

*Roll and C. Browne*, contra, were not called on.

The Vice-Chancellor said, it was not necessary to decide whether any partner on the cost-book principle could on the hearing succeed in obtaining a dissolution, and it was doubtful whether the Court would interfere on interlocutory motion, inasmuch as the plaintiff had not made out his case by his affidavits and the other side proved the reverse. The motion was accordingly refused, with costs.

*Lee v. Lee.* March 23, 1853.

SUPPLEMENTAL BILL.—FILED BY DEFENDANT HAVING CONDUCT OF ADMINISTRATION DECREE.

*A motion was refused to take off the file for irregularity a supplemental bill which had been filed by the defendant having the prosecution of an administration decree under the 56th Order of April 3, 1828, for the purpose of bringing before the Court two incumbrancers, and notwithstanding the plaintiff had given notice of her readiness to file such bill.*

In this administration suit, the common decree had been made, and the conduct of the proceedings had, upon the plaintiff's default, been given to one of the defendants under the 56th Order of April 3, 1828, and he had filed a supplemental bill to bring two incumbrancers before the Court, although the plaintiff had given notice she was willing to file the same.

*Murray* now appeared on behalf of the plaintiff, in support of a motion to take this bill off the file for irregularity.

*Speed* for the defendant, contra, cited *Devaynes v. Morris*, 1 Myl. & C. 213.

The Vice-Chancellor said, that in accordance with the case cited, the defendant might file the supplemental bill, and the motion was therefore refused.

*Chalmers v. Lawrie.* March 18, 1853.

SERVICE OF COPY DECREE ON DEFENDENT IN IRELAND.—LEAVE OF COURT.—ENTRY OF MEMORANDUM OF SERVICE.

*Order made on Clerk of Record and Writs to enter the memorandum of service of copy decree on defendants in Ireland, under the 41st Order of August 7 last, and the 15 & 16 Vict. c. 86, s. 41, r. 8, and held, that it was unnecessary first to obtain leave of the Court.*

THIS was an application for a direction to the Clerk of Records and Writs to enter the memorandum of service of the copy decree

herein on certain defendants living in Ireland, a doubt being raised whether it was not necessary first to obtain leave of the Court.

*Ellis*, in support, referred to the 15 & 16 Vict. c. 86, s. 42, r. 8, which enacts, that "in all the above cases the persons who, according to the present practice of the Court, would be necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may by an order of course have liberty to attend the proceedings under the decree;" and to Order 41 of August 7 last, which directs that "a memorandum of the service upon any person or persons of notice of the decree in any suit under the said section, rule 8, is to be entered in the office of the Clerks of Records and Writs, upon due proof by affidavit of such service."

The Vice-Chancellor made the order as asked.

April 12.—*Startin v. Gloucester and Berkeley Canal Company*—Injunction refused to restrain making dividends, costs reserved.

— 13.—*Jones v. Patten*—Part heard.

#### Court of Queen's Bench.

*Regina v. St. Giles, Camberwell.* Feb. 5, 1853.

ORDER OF REMOVAL.—EVIDENCE OF SETTLEMENT BY INDENTURE OF APPRENTICESHIP.

*On appeal from an order of removal by justices of a mother and children, it appeared that the evidence of a settlement in the appellant parish was an indenture of apprenticeship of the father, but the Sessions, in quashing the order, found that the indenture had been destroyed, and that the attesting witness thereto was dead: Held, quashing the order of Sessions and affirming the order of removal, that secondary evidence of the indenture was admissible without proving the handwriting of the attesting witness.*

In this case an order of removal, which had

been made by justices for the removal of a pauper and her children to Nuneaton from the above parish, had been quashed by the Sessions, on the ground that the evidence of a settlement of her deceased husband by apprenticeship was insufficient. It appeared from the evidence that the indenture had been destroyed, and that the attesting witness thereto was dead. The Sessions having rejected secondary evidence of the contents of the deed on the ground that the handwriting of the attesting witness had not been proved, and quashed the order of justices, this case was reserved for the opinion of the Court.

*Joyce* for the appellant parish.

*Bovill* and *Maxwell* for the respondent parish.

The Court said, that where proof of a subscribing witness to a deed was given, it was unnecessary to give evidence of such attesting witness and that the evidence of there having been a subscribing witness was necessarily some evidence of his being the attesting witness, and the appeal from the order of Sessions quashing the order of justices was accordingly allowed.

#### Insolvent Debtors' Court.

(*Coram Mr. Commissioner Law.*)

*In re Minnett.* April 12, 1853.

COUNTY COURT ACT.—DISCHARGE FROM COMMITMENT.—INTERIM ORDER FOR PROTECTION.

*Order for discharge of insolvent protected ad interim, from custody, in pursuance of an order of commitment made under the 9 & 10 Vict. c. 95.*

THIS was an application for the discharge of Wm. Minnett, an insolvent, who had obtained an interim order for protection, on April 8, from Whitecross Street Prison, to which he had been conveyed under a commitment made under the 9 & 10 Vict. c. 95, by *Storks, S. L.*

The Commissioner said, the interim order was sufficient to protect the insolvent from arrest, and the application for his discharge was accordingly granted.

### ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

#### LAW OF PROPERTY AND CONVEYANCING.

[*Concluded from p. 468.*]

##### DEED.

1. *Generality of language qualified by context.*—*A.* and his son *B.* had a general power of appointment over estates lying in eight parishes, and, subject thereto, had between them the whole interest. By deeds of appointment and release, dated 18th July, 1824, they appointed and conveyed to the Bank of England, by way of mortgage in fee, premises de-

scribed in the deed, as "All the lands" of *A. & B.* in the eight parishes (naming them) "which are specified and described in the schedule hereunder written." This schedule specified a part only of the first-mentioned estates. Subject to this charge on part, *A. & B.* retained the entire interest in the whole estates. By deed of appointment and release of 13th June, 1827, being the marriage settlement of *B.*, after reciting the creation of the power as extending to the lands thereafter settled, amongst other hereditaments, and reciting the mortgage of 19th July, 1824, and that on the

treaty for the marriage, it was agreed that *such hereditaments subject to the power as were comprised in the mortgage*, and the whole of the lady's fortune, should be settled to certain uses, *A. & B.* appointed that the lands thereafter released or expressed so to be, should (but subject to the charge thereinbefore-mentioned) go to certain uses. And *A. & B.* also by the same deed conveyed and released to the same uses lands described as *all the lands of them, A. & B., situate in the eight parishes* (naming them), "*and which are intended to be specified and described in the schedule hereunder written, but which schedule is not intended to abridge or affect the generality of the description hereinbefore expressed and contained.*" The uses were, among others, to the use of the sons of the marriage in tail male. The schedule was a precise copy of that annexed to the mortgage deed of 1824.

A case was sent from Chancery for the opinion of this Court; and, for the purposes of such case, *B. & A.* were admitted to have had the legal estate in the premises conveyed by the deed of June, 1827. The first tenant in tail under that deed claimed the lands not comprised in the mortgage deed, and the question was, whether those lands passed by the indenture of 13th July, 1827.

*Held*: That no other lands than those comprised in the mortgage passed by that indenture. *Walsh v. Trevanion*, 15 Q. B. 733; *Same v. Coode*, *ib.*; *Same v. Rhodes*, *ib.*; *Same v. Holcombe*, *ib.*

2. *Description of the land conveyed.—Plans.*—A deed purported to convey "all that messuage or farm house, &c., and several closes, &c. of land thereto belonging, called Gotton Farm, in the occupation of *J. S.*, and containing, &c., and consisting of the several particulars specified in the first division of a schedule thereunder written, and more particularly delineated in a map or plan thereof drawn in the margin of the said schedule." There were no general words.

In an action brought to try the right to a slip of land, which was not mentioned either in the schedule or in the plan above referred to, evidence was offered on the part of the defendant to show that the *locus in quo* had always been occupied with the closes mentioned and delineated in the schedule and plan, and treated as part of Gotton Farm: *Held*, that this evidence was not admissible, and that the deed was conclusive. *Barton v. Dawes*, 10 C. B. 261.

#### DOWER.

1. *Damages in count, how computed.*—To a count in dower under the Statute of Merton (20 H. 3. c. 1), the tenant pleaded *tout temps prist*: the demandant replied a demand and refusal to render dower, before the suing out of the writ, to which the tenant rejoined by a traverse of the demand. The issue having been found for the demandant: *Held*, that she was entitled to damages to be computed from the decease of her husband. *Watson v. Watson*, 10 C. B. 3.

2. *How demand made.*—*Semble*, that a demand of dower need not be made by the widow personally, or in the presence of witnesses. *Watson v. Watson*, 10 C. B. 3.

#### HUSBAND AND WIFE.

1. *Interest of husband in wife's freehold.*—A husband takes a freehold interest, during the joint lives of himself and his wife, in land belonging to her in fee simple; and such interest passes by the deed of the husband alone. *Robertson v. Norris*, 11 Q. B. 917.

2. *Right of husband to wife's savings from separate allowance.*—A husband and wife separated by agreement (not under seal), and at that time he agreed to allow her a certain sum weekly, for her support, which was paid, and she saved a certain portion of her allowance and invested it in stock, but a few days before her death she sold out the stock, and disposed of the proceeds by way of gift: *Held*, that the husband was entitled to recover back the money so given, in an action for money lent. *Messenger v. Clarke*, 5 Exch. R. 388.

#### LEASE.

1. *What covenant runs with land.*—By indenture of lease, *B.*, the lessee, for himself, his executors, administrators, and assigns, covenanted with the lessor to build four messuages on the land within a specified time from the date of the demise, and to pay rent, &c.; and there was a clause for re-entry on non-performance of this or certain other covenants. By a subsequent indenture, *B.* demised to plaintiff (the houses not having been built), and covenanted with plaintiff, that *B.*, his heirs, executors, or administrators (not adding assigns), would pay the rent reserved by the former indenture, and perform, or effectually indemnify plaintiff of, from, and against all the covenants therein contained on the lessee's or assignees' part to be performed. *B.* afterwards assigned to defendants.

*Held*, by the Court of Exchequer Chamber, affirming the judgment of the Queen's Bench, that the covenant to plaintiff was not such a covenant as would pass with the reversion of the land and bind assignees not named; and therefore that the plaintiff could not recover against the defendants for not building the wall or indemnifying plaintiff against eviction for breach of the covenant to build. *Doughty v. Bowman*, 11 Q. B. 444.

Case cited in the judgment: *Spencer's case*, 5 Rep. 16, a.

2. *Under power.*—*Covenant to pay suit and service at Courts.—To pay fines.—Watercourse.*—*Soil.—Easement.*—Tenant for life, under the limitations of a devise, had power to lease, for a term of years determinable upon two or three lives, any part of the premises usually so leased, so that there were reserved the ancient and accustomed rents and heriots of the premises therein contained, or more, and so that in every of the leases there were contained the usual and reasonable covenants.

1. *Held*, that two tenements, which ha

violently been leased separately, might be leased together under a single demise, no objection being made that the rents, &c., reserved were not in proper proportion.

2. The pattern lease, of 1749, contained a covenant to do suit and service at the Courts of the manor of *W.* (in which the premises lie), in such manner as the tenants of the manor were accustomed, and to pay all fines and amercements there imposed by reason of any just cause. A lease by the tenant for life, in 1831, contained a covenant to perform suit and service at the Courts, but no covenant to pay the fines. In fact, since 1739, no Court Baron or customary Court had been held; and there had been no freehold or copyhold tenant within legal memory.

*Held*, not a defective execution of the power; since, as there could no longer be a Court Baron or customary, a covenant to pay fines in such Courts was not a reasonable covenant, and the Court would not assume, in order to avoid the lease, that there were other Courts (as leet) of the manor; and, if they did so assume, would not hold that a covenant to pay fines there was reasonable.

3. The pattern lease contained a grant of waters and watercourses, excepting to the lessor "a watercourse flowing, or descending from a head weir," erected on the premises, "in and through a meadow," "parcel of the premises," "and from thence conveyed by a trough into a meadow," "for watering and improving the same and other lands of" the lessor. At that time, the weir forced the water of a natural stream to flow along an artificial trough, so as to irrigate lands of the lessor below. After 1749, *M.*, a lessee, erected a mill above the weir, and used some of the water, which returned to the natural stream below the weir, and could not be used for irrigating the said lands below. Afterwards a tenant for life leased the premises, "together with so much of the water" as *M.* had "been accustomed to have," for working his mill, "also the use of the water descending from the head weir," "except and reserving to the occupiers of the meadows watered by the said course running from the head weir," and thence by the trough, the right "to take the water for watering the meadow having the right thereto as heretofore accustomed."

*Held*, first, that the pattern lease did not except the channel over which the water flowed, but only subjected it to the easement; and therefore the last lease did not grant more land than the pattern lease. Secondly, that it was a question for the jury, whether the use of the water given by the last lease to the lessee was or was not larger than the use which the former lessee had under the pattern lease; and, they having found in the negative, that the lease was not a bad execution of the power. *Doe dem. Earl of Egremont v. Williams*, 11 Q. B. 688.

3. *Power.—Surrender by acceptance of a valid lease.*—Tenant in fee demised the land by indenture for a term depending on certain lives, and then devised his estate to his son for

life, with remainders over, and with a power to tenant for life to grant leases. After tenant's death, and during the above term, the son granted the lessee a fresh lease of the land, and the new indenture of lease set forth that it was granted in consideration of the surrendering up into the hands of the lessor by the lessee, at or before the delivery thereof, of the lease first granted, which surrender is hereby made and accepted accordingly. The new lease was a bad execution of the power. One of the lives mentioned in the first lease was still existing.

*Held*, that the surrender was inoperative, and the first lease remained in force; and this whether the second lease at the time of the demise was void or only voidable at the will of the tenant for life, and whether the surrender was implied or express; the ground of the decision being that the new lease did not pass an interest according to the contract, and therefore the acceptance of it, though with express words as above stated, did not effect an absolute surrender. *Doe dem. Earl of Egremont v. Courtenay*, 11 Q. B. 702.

Cases cited in the judgment: *Wilson v. Sewell*, 4 Burr. 1,980; *Davison dem. Bromley v. Stanley*, 4 Burr. 2,213; *Doe dem. Biddulph v. Poole*, 11 Q. B. 713.

4. *Power of resumption.—Notice.—Proviso for compensation.—Ejectment when demise may be laid.*—A lease of land by indenture contained this clause, following covenants to repair, pay rent, &c. "Provided, nevertheless, that in case *M.* (the lessor) 'shall at any time be desirous of having any part of the said piece of land delivered up to him, and of such his desire shall give three calendar months' notice to *C.*' (the lessee), 'then, at the expiration of such notice, he, the said *C.*, doth hereby covenant peaceably to surrender up, and that the said *M.* shall and may take peaceable possession of, such part or parts of the said land as shall be mentioned in such notice; he the said *M.* paying to the said *C.* a reasonable compensation in respect of the moneys which may have been laid out by *C.* in improving the condition of so much of the said piece of land as shall be so given up; and then and from thenceforth the rent reserved by this indenture shall be reduced," &c. (in proportion to the land given up); and the remainder of the said land shall be held by *C.* at such reduced rent, and *M.* shall have the same powers and remedies in all respects as if this lease had originally been granted at such reduced rent; and all the covenants, clauses, &c., herein contained, shall be as valid for so much of the demised land as shall not be included in such notice as if the reduced rent had been the original rent, and the land originally demised had been the land not included in such notice."

*Held*, that, under this proviso, the lessor giving notice, might resume all the demised land.

That the proviso did not operate as a mere covenant by the lessee to give up on notice, but

expressly gave the lessor power to take possession; and that he might do so without having first paid compensation.

The lessor served a notice requiring the lessee to give possession of the whole land at the end of three months, and adding:—"I hereby offer and agree to allow you a reasonable compensation for any repairs which may have been done by you." *Held*, a sufficient offer of compensation under the proviso.

The lessee brought ejectment, laying one demise, entry, and ouster before, and another demise, entry, and ouster after, the expiration of the three months. The defendant had entered during the three months. The declaration was dated after their expiration: *Held*, that the plaintiff could not recover on the first demise. *Doe dem. Gardner v. Kennard*, 12 Q. B. 244.

5. *Additional rent by way of penalty.*—The *reddendum* of a lease was,—“yielding and paying therefore” to lessor “the yearly rent or sum of 100*l.*,” “the said annual rent to be paid by two equal half-yearly days of payment in the year,” naming the days; “and, also, *yielding and paying* unto” the lessor, “at or upon the days or times of payment of the said yearly rent first above reserved, over and above the said rent, a *further yearly rent* or sum, according to the rate of” 20*l.* the acre, for converting grazing land into tillage without licence; “and, also, *yielding and paying*” to the lessor, “at or upon the days or times for payment of the rent first named, over and above the said rents hereinbefore reserved, according to the rate of 20*l.*” the acre, for any part which the lessee should set, let, or part with the possession of, or which by his privity should be used for purposes named, without certain prescribed treatment; “and, also, *yielding and paying*” to the lessor, at or before the days for payment of the rent first reserved, “over and above the same rents, the *further yearly rent* or sum of 20*l.*” per acre, for any part mowed for hay, unless manured as specified; “the said *several eventual or contingent rents*, if any such shall become due, to be additional to the first-mentioned rent, and to be paid and payable half-yearly by equal portions; and the first payment thereof to become due and be made at that day of payment of the said first-mentioned rent which shall first and next happen after such eventual or contingent rent shall be incurred, and to continue payable from thenceforth during all the residue of the term.” Covenants binding the lessee not to do some of the acts upon which the additional payments were to accrue, and to pay the yearly rent of 100*l.*, “and also the said several eventual additional rents, or such of them, if any, as shall be incurred or become due, at the several days and times, and in the proportions, manner, and form above expressed.” Proviso for re-entry if the yearly rent, “or the said several eventual or conditional rents, above reserved,” should be in arrear for 30 days.

*Held*, that the additional sums were payable throughout the term, if the act or default upon

which they arose was once committed. *Bowers v. Nixon*, 12 Q. B. 558, n.

6. *Covenant to pay rates.*—Where a lessee covenants to pay rates and taxes, no demand is necessary to constitute a breach, so as to entitle the lessor to avail himself of the proviso for re-entry. *Davis v. Burrell*, 10 C. B. 821.

7. *Agreement to give up defunct instrument.*—*How satisfied.*—Where an agreement is entered into to give a lease to which a seal is affixed, but in which lease the term has expired, such agreement is not satisfied by giving up the lease, with the seal torn off. *Richardson v. Barnes*, 4 Exch. R. 128.

8. *Consideration.*—*Settlement of Accounts.*—*Payment.*—*Set-off.*—*Stamp.*—The plaintiff granted a lease to the defendant, in consideration of a premium of 40*l.*, and, being indebted to the defendant in that amount for work done, a settlement of accounts took place between them, when the defendant was allowed the 40*l.* in account, but no moneys in fact passed. The plaintiff having afterwards sued the defendant for 37*l.* 4*s.*, for rent and goods sold, the defendant claimed to set-off the 40*l.* as money received for his use, on the ground that it was not expressed in the lease, and therefore he was entitled, under the 48 Geo. 3, c. 149, s. 24, and 55 Geo. 3, c. 184, to recover: *Held*, first, that the effect of those statutes is to put leases for a premium, on the same footing as conveyances upon a sale, so that in all cases where the consideration is not expressed in the lease, the amount paid may be recovered back; secondly, that the settlement of accounts amounted to payment; and, thirdly, that, as the defendant might recover back the premium as money received for his use, he was entitled to set it off as a debt. *Gingell v. Purkins*, 4 Exch. R. 720.

Cases cited in the judgment: *Jeffs v. Wood*, 2 P. Wms. 128; *Wade v. Wilson*, 1 East, 195; *Standish v. Ross*, 3 Exch. R. 527; *Lucas v. Jones*, 5 Q. B. 949.

See *Building Lease; Covenant*, 2, 5.

#### MARRIAGE SETTLEMENT.

*Covenant.*—*By a father, on the marriage of his daughter, by deed or will, to give or bequeath to her an equal share of property he might be possessed of.*—*A.*, upon the marriage of *B.*, his daughter, covenanted with her husband *C.*, his executors, &c., by deed or will to give, leave, and bequeath unto *B.* one full equal eighth part or share (that being an equal share with his other children), of all the real and personal estate of which he should be seised or possessed. *B.* died in the lifetime of *A.* *A.* having, in his lifetime, made some disposition of property in favour of a son, by will devised and bequeathed his real and personal estate for the benefit of his widow and some of his surviving daughters: *Held*, that *C.* had not any cause of action against the executors of *A.* *Jones v. How*, 9 C. B. 1.

#### MINES.

*Right of landowner to have the surface upheld by the strata beneath.*—Action on the case



by the occupier of the surface of land for negligently and improperly, and without leaving any sufficient pillars and supports, and contrary to the custom of mining in the country where, &c., working the adjacent minerals, *per quod* the surface gave way. Plea: Not Guilty. It was proved on the trial that plaintiff was in occupation of the surface, and defendant of the subjacent minerals; but there was no evidence how the occupation of the superior and inferior strata came into different hands. The surface was not built upon. The jury found that the defendants had worked the mines carefully and according to custom, but without leaving sufficient support for the surface.

*Held*, that the plaintiff was, on this finding, entitled to have the verdict entered for him; for that, of common right, the owner of the surface is entitled to support from the subjacent strata; and, if the owner of the minerals removes them, it is his duty to leave sufficient support for the surface in its natural state. *Humphries v. Brogden*, 12 Q. B. 739.

Case cited in the judgment: *Wyatt v. Harrison*, 2 B. & Ad. 871, 876.

#### MORTGAGE.

1. *Payment of principal and interest together with costs.—Re-conveyance under 7 Geo. 2 c. 20, s. 1.—Mortgagee in possession.*—The 7 Geo. 2, c. 20, s. 1, which entitles a mortgagor, after action brought, on payment of principal and interest, as well as all costs expended in any suit at law or in equity, to a re-conveyance of the lands, and to the delivery of the title-deeds, does not apply to cases where the mortgagee is in possession, or has attempted to exercise his right of sale. *Sutton v. Rawling*, 6 D. & L. 673.

2. *Abortive attempt to sell under power with mortgagor's consent.—Mortgagee entitled to costs of, before re-conveyance.*—Where a mortgagee, under a power contained in the mortgage deed, had, with the mortgagor's concurrence, attempted to sell the property, but unsuccessfully and had afterwards brought an action on the covenant, but which had been stayed on payment of the principal and interest, the Court refused to compel him to re-convey and deliver up the title-deeds, except on payment of the costs of the abortive sale, of the execution of the re-conveyance, and of showing cause against the rule. *Sutton v. Rawlings*, 6 D. & L. 673.

#### MORTMAIN ACT.

*Shares in a joint-stock bank possessing real and copyhold estates and mortgages.*—Shares in a joint-stock bank, the property of which consisted, in part, of freehold and copyhold estates, and mortgages for terms of years: *Held*, not to be within the Statute of Mortmain, 9 Geo. 2, c. 36. *Myers v. Perigal*, 11 C. B. 90.

#### MORTUARIES.

*Whether included in "tithes, oblations, and obventions."*—Not within "small tithes, of-

*ferings, oblations, and obventions."*—*Oral evidence to explain order of justices.*—*Semble*, That the Stats. 27 H. 8, c. 20, 32 H. 8, c. 7, and 2 & 3 Ed. 6, s. 13, for the payment and recovery of "offerings," "oblations," and "obventions," and 24 H. 8, c. 12, s. 2, prohibiting appeals to Rome in causes relative to right of "tithes, oblations," and obventions," including mortuaries.

But mortuaries are not within Stat. 7 & 8 Wm. 3, c. 6, s. 2, which authorises justices of the peace to adjudicate upon complaints of subtraction of "small tithes, offerings, oblations," and "obventions."

Justices of the peace made an order under the i t-mentioned Statute, reciting a complaint that certain parishioners had refused to pay to the parties entitled the oblations, obventions, and other customary dues and payments arising, &c.; and the justices by their order adjudicated that there was due from those parishioners the sum of 10s., being the amount and value "of the said oblations, obventions, and other customary dues and payments which have become due," &c., "from them," &c., and ordered them to pay the said sum, &c. In an action for trespass for a distress made under the order.

*Held*, that evidence was admissible to show that the 10s. were claimed before the justices in respect of the mortuary; there not being, on the face of the order, any finding of fact by which that extrinsic evidence was excluded.

And that, in the absence of such evidence, the order would be bad for uncertainty. *Ayrton v. Abbott*, 14 Q. B. 1.

Cases cited in the judgment: *Brittain v. Kinaird*, 1 Br. & B. 432; *Branwell v. Penneck*, 7 B. & C. 536.

#### OUTSTANDING TERM.

*Presumption of surrender.*—The surrender of a term assigned to attend the inheritance is not to be presumed, unless there has been a dealing with the estate in a way in which reasonable men would not have dealt with it, unless the term had been put an end to. *Garrard v. Tuck*, 8 C. B. 231.

See *Satisfied Term*.

#### POWER OF APPOINTMENT.

1. *By will to be signed and published.—Attestation of publication.*—Certain estates were settled, by deed, to the use of such person or persons, in such parts, shares, &c., as S. S. should, by deed, as therein mentioned, or by her last will and testament in writing, or any writing purporting to be, or in the nature of, her last will and testament, to be by her signed and published in the presence of, and attested by, two or more credible witnesses, direct or appoint."

S. S. made a will, which was signed and sealed by her in the presence of two witnesses, to whom she at the time declared it to be her last will and testament. The attestation clause was thus:—*signed and sealed in the presence of A. B., C. D.*

*Held*, that this was a sufficient "publication," and consequently that the power had been well executed. *Vincent v. Bishop of Sodor and Man*, 8 C. B. 905.

2. *Married woman.*—*Reference in will to power.*—*Execution and attestation.*—A power was reserved to a married woman to dispose of personal property by her last will and testament in writing, to be by her duly made and published in the presence of, and to be attested by, two or more credible witnesses. The donee, by her will, without any reference to the power, or to the subject-matter, bequeathed to her husband "all that she did and should or would thereafter be entitled to, or should possess." Concluding thus:—"I need by me, *E. J.*, Feb. 24, 1831, in the presence of two witnesses;" and then followed the signatures of the two witnesses: *Held*, that this was not a due execution of the power. *Johns v. Dickinson*, 8 C. B. 934.

#### REGISTERING ASSIGNMENT OF LEASE.

*Form of memorial.*—A memorial of an assignment of lease indorsed on the lease, was tendered for registration to the Registrar for Middlesex, under Stat. 7 Ann. c. 20, in the following form:—"An indenture of assignment" (then followed a statement of the date and parties to the assignment), "assigning all that brick messuage," &c. (specifying the premises and giving a full description of them as to locality and occupation), "by the description of 'The messuage or tenement, out-offices, and premises, comprised in, and demised by, the within written indenture of lease, with the appurtenants.'" The memorial did not state the date of the lease itself, or the parties to it. It appeared on affidavit, in support of a rule for a mandamus to the Registrar to register this memorial, that the full description of the premises was taken from the lease. *Held*,

That the memorial did not comply with the requirements of Stat. 7 Ann. c. 20, s. 6, as it did not show that the premises were described in such manner as the same were expressed in the deed to be registered, or in the lease thereby referred to.

Where the deed, of which a memorial is to be registered, is indorsed on an earlier deed, it is not sufficient to describe the premises by such memorial, in the terms used in the earlier deed, without express reference to it, if the deed to be registered describes the premises simply by reference to the earlier deed. *Regina v. Registrar of Middlesex*, 15 Q. B. 976.

#### REGISTRY OF JUDGMENT.

*To bind real estate.*—1 & 2 Vict. c. 110, ss. 13, 16, and 19.—*Expunging or altering.*—*Relinquishment of charge by taking debtor in execution.*—Where a plaintiff, after registering his judgment to charge the defendant's real estate under 1 & 2 Vict. c. 110, s. 19, took the defendant in execution upon a *ca. sa.*, the Court ordered him to attend before the Master of the Common Pleas, and consent to an entry of

that fact being made in the Master's book. *Lewis v. Dyson*, 1 L. & M. 33.

#### RELEASE.

*Covenant not to sue.*—*Agreement.*—*Construction of.*—A declaration stated, that an action had been commenced by the public officer of a banking co-partnership against T., for the recovery of the amount of a bill of exchange drawn by him and accepted by the defendant for 1,250*l.*; that, while the action was pending, it was agreed between the company, T., and the defendant, that the action should be settled as follows:—250*l.* and 500*l.* by the promissory notes of T., and 500*l.* by the defendant's promissory note at 12 months, the defendant consenting to the company appropriating the securities held by them to the payment of such balance, and the defendant agreeing to give them a power to sell the properties mentioned in the securities, the company to forego all interest on receiving the three notes, and to guarantee to give up the bill sued on and the 1,000*l.* bill received on account of the said bill. The declaration then stated mutual promises, and averred that the company had performed all things on their part to be performed, and had always been ready and willing to settle the action, &c. Breach, that the defendant did not nor would give the company the promissory note for 500*l.*, nor the said power of sale. Plea, that the defendant entered into the agreement jointly with M., B., and J., and that, after breach of the agreement, by an indenture made between the nominal plaintiffs in this action (one of whom was the public officer of the company) of the first part; the directors of the company of the second part; the defendant, M., B., and J., of the third part; and T. of the fourth part, the public officer, on behalf of the company, did remise, release, and forever discharge the said M., B., and J., of and from the said action, and all actions and suits, causes of action, and debts whatsoever, without the consent of the defendant, and thereby released the defendant from the same: *Held*, 1st, that the indenture set out in the plea did not operate as a release, but only as a covenant not to sue; 2ndly, that the agreement set out in the declaration was a binding engagement and not a mere accord, inasmuch as it would have been broken if the company had proceeded with the original action, a new person having been made a party to the contract. *Henderson v. Stobart*, 5 Exch. R. 99.

#### RIGHT OF WAY.

1. *Abandonment shown by cessation of user or submission to adverse acts.*—Where, on the trial of an indictment for driving a carriage along, and thereby obstructing a public foot-way through a narrow lane, the question was, whether the defendant's private right of carriage-way, preceding the public user, and inconsistent therewith, had been released or abandoned, and the jury were directed that no interruption by the public for a less period than 20 years could destroy the private right,

a new trial, for misdirection, was granted, after verdict for the defendant.

In such a case (no actual interruption for 20 years being proved), it is not so much the duration of the cesser to use the private easement, as the nature of the act done by the grantee of such easement, or of the adverse act acquiesced in by him, and the intention in him, which either the one or the other indicates, that is material for the consideration of the jury. *Regina v. Chorley*, 12 Q. B. 515.

Cases cited in the judgment: *Moore v. Rawson*, 3 B. & C. 332; *Liggins v. Inge*, 7 Bing. 682, 693.

2. *Grant for all purposes.*—*Whether assignable.*—In trespass, *quare clausum fregit*, the defendants justified under a supposed right of way conveyed to them by A. The plea, after stating the conveyance to A. of "a certain close, and certain plots, pieces, or parcels of land, &c., together with all ways, &c. particularly the right and privilege to and of the owners and occupiers of the premises conveyed, and all persons having occasion to resort thereto, of passing and re-passing, for all purposes, in, over, along, and through a certain road, &c.," alleged an assignment by A. to the defendants of "the said lands, tenements, hereditaments, premises, and appurtenants," granted by the former deed; and then averred that the trespasses complained of were committed by the defendants being owners of the said lands, &c., and in the possession and occupation thereof, in using the right of way for their own purposes. The plaintiffs, after setting out the deed upon oyer, demurred specially to the plea, on the ground that the defendants claimed a more extensive right than that granted by the deed, and that, if the right as claimed was granted by the deed, it was not assignable:

*Held*, that the grant to A. was not restricted to the use of the way for purposes connected with the occupation of the land conveyed; but that the right in question was not one which inhered in the land, or which concerned the premises conveyed, or the mode of occupying and enjoying them, and therefore did not pass to the defendants by the assignment. *Ackroyd v. Smith*, 10 C. B. 164.

#### SATISFIED TERM.

*What is a term attendant on the inheritance within Stat. 8 & 9 Vict. c. 112, s. 2.*—H., seised in fee of land, mortgaged for 1,000 years to D. Afterwards H. mortgaged in fee to J., subject to the term. Afterwards H. mortgaged in fee to M., and assigned the equity of redemption to C. Afterwards M. assigned his mortgage in fee, and D. assigned the term, both to trustees, the term to be re-conveyed as C. should direct. Afterwards, and after 31st December, 1845, C. paid off the sums secured on the term. The mortgage to J. was not known to any of the parties except J. and the mortgagor H.

On ejectment by the trustees for C. against J., *held*,

That the plaintiff must recover, for that the term was still in existence, and not put an end to by Stat. 8 & 9 Vict. c. 112, s. 2, inasmuch as it was not made attendant on the inheritance by express declaration, nor was so by construction of law, being expressly assigned in trust for the parties supposed, by mistake, to be entitled to the inheritance. *Doe dem. Clay v. Jones*, 13 Q. B. 774.

See *Outstanding Term*.

#### VENDOR AND PURCHASER.

1. *Measure of damages, on vendor's failure to make a good title.*—A. entered into possession of premises under an agreement with B., under which he was to hold them as tenant for two years, at the yearly rent of 50*l.*, with liberty to him to make, at his own expense, such alterations and additions to the premises as he might think proper, the same being improvements, and A. to have the option of purchasing the premises, at any time during the two years, for 600*l.*: "it being understood between the parties that B. was possessed of the premises for his own life and the life of C., and of the survivor of them." It being, however, discovered that B. had not the precise interest mentioned in the agreement, A. brought assumpsit to recover damages for the breach of contract, and also compensation for the money expended by him in improvements.

*Held*, that he was only entitled to recover the value of the proposed lease, and not the value of the improvements. *Worthington v. Warrington*, 8 C. B. 134.

2. *Creation and annexation of rights unconnected with use of land.*—*Power of.*—*Assignee.*—It is not competent to a vendor to create rights unconnected with the use or enjoyment of the land, and to annex them to it; neither can the owner of land render it subject to a new species of burthen, so as to bind it in the hands of an assignee. *Ackroyd v. Smith*, 10 C. B. 164.

Cases cited in the judgment: *Keppell v. Bailey*, 2 Mylne & K. 517; *Weekly v. Wildman*, 1 Ld. Raym. 407.

#### VOLUNTARY ASSIGNMENT.

*As against execution creditors.*—A. executed *bond fide* a deed of assignment of all his property to B., in trust for such of A.'s creditors as should come in and execute the deed. B. (who was not a creditor of A.) took possession. C., a creditor of A., applied to B. for an explanation, and, having received one, said he was satisfied, and took no step to obtain payment: *Held*,

That enough had taken place to create the relation of trustee and *cestui que trust* between B. and C., and consequently that the deed was not void against an execution creditor as being voluntary. *Harland v. Binks*, 15 Q. B. 713.

Cases cited in the judgment: *Garrard v. Lord Lauderdale*, 3 Sim. 1; *Williams v. Everett*, 14 East, 582; *Kirwan v. Daniel*, 5 Hare, 493, 500.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 23, 1853.

## FINANCIAL STATEMENT.

### THE INCOME AND CERTIFICATE TAXES.

In professional circles, topics of ordinary interest have for this week given place to discussions upon the financial statement of the Chancellor of the Exchequer. The monstrous injustice of taxing incomes derived from personal energy and ability to the same extent as the incomes arising from permanent and realized property is almost universally felt, and as generally condemned by the professional and industrial classes. This oppressive system operates with accumulated severity, however, upon those who derive the whole, or a large proportion, of their incomes, from the practice of the law. In addition to the influences affecting the business profits of persons engaged in other avocations, the lawyer's income is subject to continual fluctuations arising from judicial regulations and the capricious exercise of legislative authority. A sentence foisted into an Act of Parliament in Committee, or a Rule of Court, has often proved as destructive to the income of a legal practitioner as the loss of health or the decay of business. Fully recognising their liability to contribute a fair quota to the national burthens, the members of the Legal Profession, in common with others deriving income from industrial pursuits, anticipated from the justice of the Government, a modification of that branch of the property tax which comprehends incomes derived from professions.

Great curiosity, not altogether unmixed with anxiety, was also felt as to the mode in which Mr. Gladstone was prepared to deal with the Annual Certificate Duty paid exclusively by solicitors, attorneys, and proctors. That this oppressive impost in

its present shape was untenable, had been settled by repeated decisions of the House of Commons. The only question was, whether the Chancellor of the Exchequer was immediately prepared to accede to the petitions of those who, feeling the burthen of the tax, asked for its removal, or whether some modification was to be proposed more in accordance with the theoretical views of the Finance Minister, and less satisfactory to those who claimed to be relieved from the continuance of a practical grievance.

It must be admitted that upon both the questions in respect of which the members of the Legal Profession may be considered peculiarly interested, the statement of the Chancellor has fallen short of what might have been fairly expected from the right honourable gentleman.

Although the unequal bearing of the income tax upon intelligence and skill as compared with property, was repeatedly adverted to, and in some sense recognized, in the financial statement, and the peculiar hardship with which it operated upon professional men was referred to with expressions of sympathy and regret, it is not proposed to endeavour to effect any more equitable adjustment, and upon this branch of taxation no relief—no present mitigation—is meant to be afforded to the professional classes. It is indeed suggested, that at the end of two years all who contribute to the income tax may be relieved to the extent of one penny in seven pence by the reduction of the tax, and that at the end of four years the tax may be reduced to five pence in the pound. But it is manifest that these prospective reductions have no greater value than promises, the realization of which depend in a very inconsiderable degree upon the intentions of those who make, or even of those who are now asked to sanction them. To provide that any tax pro-

ducing five or six millions of annual revenue, shall be reduced at the end of four years or abolished at the close of seven years, is to legislate for posterity, without any possible security that the Government or the Parliament of that day, even if well inclined, will be able to give effect to the proposed remission or abolition of the tax? Be this as it may, according to the Government scheme, the income tax is to be paid as at present for the next two years, with no other modification than the restriction of the exemption to incomes of 100*l.* per annum instead of 150*l.*, and the extension of the tax to Ireland which has heretofore been exempt from its operation.

In discussing the possibility of reconstructing the income tax, so as to prevent it from pressing with less severity upon professional men, the Chancellor of the Exchequer referred to a statistical fact of some importance, namely that the net sum paid by professions does not exceed 250,000*l.* per ann. "I have made it my business," (says the right honourable gentleman) "to ascertain what proportion of the whole payments under Schedule D, proceeds from professional persons, and I find that, including certain amphibious classes, it is about 300,000*l.*, or rather more than one-twentieth part of the whole income tax. But there are several persons who are returned as professional persons, who for the purpose of a new classification of the income tax must be considered as traders, such as auctioneers, house and land agents, army agents, country surgeons, keepers of shops in a small way, and to a certain extent, solicitors likewise, for they are very considerable capitalists, and their capital is invested in their trade, and their income must be obtained upon it by their charges like the income of any other trade. Take these mixed cases out of the professions, and the net sum that may be said to be paid by professions is about 250,000*l.*, so that they pay one-twenty-second part of the income tax."

We are only desirous at present to direct attention to the result at which the Chancellor of the Exchequer arrived in this part of his statement, and to express our surprise that when he came to deal with the annual certificate duty—a tax bearing upon a portion of only one of the professions,—it did not suggest irresistible grounds for adopting a more liberal as well as a juster course. If all the professions, clerical, legal, military, and medical contribute no more than 250,000*l.* to the

income tax, the oppressive nature of the attorneys tax may be estimated, when it is remembered that it amounts to 120,000*l.* per annum, nearly half the amount of income tax paid by *all* the professions, and that it is enforced without the possibility of escape or evasion, from those who must also pay their full proportion, in common with other professional men, under Schedule D. This brings us to the mode in which Mr. Gladstone proposes to modify the taxes to which attorneys are now subjected. We copy, without abridgment, this portion of the right honourable gentleman's statement as it appears in the *Morning Chronicle*, which professes to furnish a verbatim report :—

"Next comes a subject that is popular with the majority of this house—it is the case which my noble friend the member for Middlesex (Lord R. Grosvenor) has brought before us—the case of the attorneys. I must confess I do not think that the vote of the House of Commons would, of itself, taken alone, justify the Government in proposing the remission of this duty, because we feel strongly that the vote of the House of Commons given upon a particular duty is given of necessity upon considerations attaching to that particular duty, and without a close view of the comparative and relative claims of others; but we do think, sir, that in consideration of the legislative changes which have of late been made, and which have tended materially both to restrict the action of the law, and to diminish the business of attorneys, there may be some remission of taxation (hear, hear). What remission then shall it be? We propose a remission to the amount of about 50,000*l.* but we are not satisfied with the proposal which has been made by the Profession. The Profession is at present subjected to three charges;—a charge on admission to be an attorney, which is small; and the two main charges, one upon certificates of 12*l.* a year from metropolitan solicitors, and 8*l.* a year from country solicitors, and a charge upon articles of clerkship of the enormous amount of 120*l.*, for so much capital is paid by anticipation by persons, of whom some may die whilst others take to the Profession, which is certainly a most exceptional form of paying so heavy a tax. The Profession have said,—'Take the tax off the annual certificates, for the benefit of those who are already in the Profession, and leave all those who are to enter it to pay the whole.' I do not think that would be a fair mode of dealing with it (hear, hear). Having made up our minds that we may propose to Parliament with propriety to make a remission of about 50,000*l.* a year, we propose to apply that in reducing both those duties—to reduce the certificate duties from 12*l.* and 8*l.* to 9*l.* and 6*l.*, and to reduce the duties on articles of clerkship from 120*l.* to 80*l.* (hear, hear). The total of those reductions will amount to 48,000*l.*"

Now, in the first place, we venture respectfully to doubt whether the Chancellor of the Exchequer has accurately stated the representations made to him on behalf of the attorneys, when he describes the Profession as saying,—“Take the tax off the annual certificates for the benefit of those who are already in the Profession, and leave all those who are to enter it to pay the whole.” Fairly interpreted, the representation of the Profession was,—“The three taxes to which attorneys are subjected are all objectionable,—abolish all three if you can, but at all events abolish the yearly certificate duty, which is the most oppressive and intolerable of the three.” Mr. Gladstone, however, to use his own words, “is not satisfied with the proposal made by the Profession,” and he cannot be surprised if *the Profession is not satisfied with his proposal*. In truth, the proposal to reduce the Certificate Duty by 25 per cent. does not remove any *one* of the objections to the tax, nor is the matter mended by reducing the stamp upon the articles of clerkship from 120*l.* to 80*l.*, as proposed. The attorney will still have to pay a *treble* personal tax, with which no other profession or trade is burdened, for the privilege of exercising his calling. The old and the young, the prosperous and the struggling practitioner will have to pay the same amount of tax, without reference to their relative income or capability. In a word, the proposition of the Chancellor of the Exchequer is wholly unsatisfactory. It has not been rendered more acceptable by the tone and spirit in which it is made, but it is essentially inadequate. The pecuniary pressure of the tax is undoubtedly felt most severely by the junior members of the Profession, but the tax itself is an anomaly and an insult. Seniors and juniors therefore felt it a duty to combine to obtain justice. The exertions made to procure the repeal of the tax would be insufficiently requited by such a reduction as that now proposed. We shall be surprised to find that any considerable number of our country friends are willing to compromise their objections to the Certificate Duty by being absolved from the payment of 2*l.* annually; and the condition of the town practitioner must indeed be deplorable if it can be materially improved by substituting the annual payment of 9*l.* for 12*l.* Without presuming to anticipate, still less to dictate, the course it may be deemed expedient to adopt by the friends of the Profession in or out of Parliament, we make no scruple in expressing

our conviction, that the interests of the attorneys and solicitors will be best consulted by declining to accept the proposition of the Chancellor of the Exchequer in its present shape, and redoubling the efforts already made to procure the *total and immediate repeal* of this oppressive and unjustifiable burthen.

## OATHS IN CHANCERY BILL.

It appeared last week that this Bill had passed both Houses; but from the printed papers of the House of Commons of the 19th inst., we extract the following from the reasons given by the House of Lords for disagreeing to the amendments made by the Commons in this Bill:—

“Because it is not intended to permit Solicitors acting as Commissioners beyond 10 miles from London to act within 10 miles (which they cannot now do), and thereby take the fees hitherto received for the Suitors’ Fund, but only to enable Solicitors residing within the 10 miles to *act at their own residences*, and this was conceded upon the representation by them of the hardship of having to leave their business and go to Lincoln’s Inn to have the oath administered.”

The “reasons” also state that “it was not intended that any Solicitors should set up an office in the neighbourhood of the Court for the purpose of administering oaths and taking declarations, affirmations, and attestations of honour.”

We apprehend that if the power to administer oaths be confined to the Solicitors’ own residences, the measure will not be so useful as we anticipated. In many instances it would be of great importance to enable a Solicitor to attend the deponent who may be ill or infirm at his own home.

## LORD ST. LEONARDS’ LUNACY REGULATION BILL.

THE following is an analysis of the clauses of this bill, now in a Select Committee of the House of Lords:—

\*.\* *The sections which relate to professional practice are printed in italics.*

Repeal of Acts in schedule. Saving of validity of proceedings, and of salaries, &c., under repealed Acts. Mode of proceeding in existing cases; sect. 1.

Interpretation of terms; s. 2.

Schedules parts of Act; s. 3.

Extent of Act; s. 4.

Short title of Act; s. 5.

*Officers.*

Lord Chancellor to appoint two Masters in lunacy; s. 6.

Masters to have powers of Commissioners; s. 7.

References connected with lunatics to be made to Masters; s. 8.

Masters to perform duties under regulations of Lord Chancellor; s. 9.

Registrar to perform duties under regulations of Lord Chancellor; s. 10.

Duties of the clerk of the custodies to be performed by Masters and Registrar; s. 11.

The Masters salaries and retiring annuities; s. 12.

Lord Chancellor may remove and give annuities to future Masters if afflicted with infirmity; s. 13.

Salary of registrar; s. 14.

Number and salaries of the clerks of the Master and the registrar; s. 15.

Lord Chancellor to appoint visitors; s. 16.

Masters to be *ex officio* visitors; s. 17.

Visitors not to be interested in houses for reception of insane persons; s. 18.

Salaries of visitors; s. 19.

The visitors and Masters to form a board, and Lord Chancellor may appoint registrar a member of the board; s. 20.

Lord Chancellor to appoint secretary to visitors; s. 21.

The salary of the secretary and his clerk; s. 22.

Masters, visitors, &c., to be allowed travelling and other expenses; s. 23.

Salaries, &c., quarterly, out of Suitors' Fee Fund; s. 24.

*Fees and Per-centage.*

Power to Lord Chancellor to vary and abolish and fix fees, and to substitute per-centage; s. 25.

Lord Chancellor to fix rate, &c., of per-centage; s. 26.

Per-centage to be paid notwithstanding death, &c., before payment; s. 27.

Power to exempt small properties during lunatic's life; s. 28.

Fees, &c., to be paid into the Suitors' Fee Fund; s. 29.

Provisions respecting Chancery stamps to extend to lunacy; s. 30.

Provisions respecting fees to apply to cases under 8 & 9 Vict. c. 100, and to certain cases where lunatic is out of jurisdiction; s. 31.

Recital of 3 & 4 Wm. 4, c. 36, imposing a per-centage. Sums now due for per-centage to be paid, and present per-centage to continue till new scale fixed; s. 32.

Salaries, &c., charged on this per-centage to continue payable thereout; s. 33.

Account to be closed, and balance carried to Suitors' Fee Fund; s. 34.

Account to be audited; s. 35.

*Inquisition.*

Commissions may be directed to fewer than three persons; and shall be directed to Masters; s. 36.

General Commission may be directed to Masters; s. 37.

Alleged lunatic, within jurisdiction, to have notice, and may demand jury; s. 38.

Where alleged lunatic demands jury, Lord Chancellor may examine him as to competency, and order jury; s. 39.

Where jury may be dispensed with; s. 40.

Jury to be had, if Masters certify that it is expedient; s. 41.

Certificate of Masters without jury to be an inquisition; s. 42.

Jury to be had if lunatic out of jurisdiction; s. 43.

Lord Chancellor may regulate number of jury; s. 44.

Inquiry not to be carried back, except under special order; s. 45.

Commissioners with jury to have powers of Judge of Court of Record; s. 46.

These provisions prospective only; s. 47.

Special Commission may be issued; s. 48.

Reference in other Acts to Commission shall apply to general Commission; s. 49.

Inquisition and supersedeas may be transmitted from and to Ireland and England, and be acted upon there respectively; s. 50.

Proceedings under 8 & 9 Vict. c. 100, to be discontinued; s. 51.

Commission to be issued on report of Commissioners; s. 52.

*Proceedings after Inquisition.*

Evidence may be oral; s. 53.

Masters may administer oaths and take recognizances; s. 54.

Swearing of affidavits in the colonies, &c.; s. 55.

Form of affidavits; s. 56.

Short form of affidavit for verification of documents; s. 57.

Witnesses may be cross-examined orally. How expenses to be paid; s. 58.

Masters may issue advertisements; s. 59.

Masters to approve of security; s. 60.

Masters may authorise payment or transfer into court of money or stock as security for committee; s. 61.

Masters may receive and deliver out deeds, &c., of lunatic, and authorise payment or transfer into court of money or stock belonging to lunatic; s. 62.

Grant of the estate may be extended to surviving or continuing committees in certain cases; s. 63.

Form of allowance of accounts; s. 64.

Masters to distinguish items in accounts which they cannot allow, and the account to be submitted to the Lord Chancellor; s. 65.

Masters to receive proposals in certain cases; s. 66.

Masters may receive proposals in other cases; s. 67.

Persons objecting to Masters receiving proposal may apply to Lord Chancellor; s. 68.

Masters shall certify as to propriety of proposal with regard to costs; s. 69.

Person insisting on report liable to costs; s. 70.

On application not being made to Masters, costs may be ordered to be paid; s. 71.

Masters to inquire as to next of kin, and they are to have notice of proceedings; s. 72.

No inquiry as to next of kin where property exempted from fees; s. 73.

Lord Chancellor may dispense with or limit inquiry as to next of kin; s. 74.

Masters to report where inquiry as to next of kin inexpedient; s. 75.

Lord Chancellor may dispense with attendance of next of kin; s. 76.

Masters to determine which of next of kin to attend before them and to certify, and same only to attend before Lord Chancellor; s. 77.

Masters may appoint guardian for lunacy; s. 78.

In cases of members of same family, proceedings may be consolidated, and evidence interchanged; s. 79.

Masters to open and deliver out will; s. 80.

Masters may inquire respecting interest in stock of lunatic residing out of jurisdiction; s. 81.

Masters may direct times, &c., of proceeding before them; s. 82.

Masters to inquire into delays; s. 83.

Masters may disallow costs; s. 84.

Documents not to be of unnecessary length; s. 85.

References for taxation to be made to two Taxing Masters; s. 86.

Masters may report decision pending inquiry; s. 87.

Form of reports; s. 88.

Reports to be filed with Registrar in Lunacy only; s. 89.

#### Chamber Business.<sup>1</sup>

Objections to report may be brought in; s. 90.

No petition against confirmation, but objections to be brought forward on petition for confirmation; s. 91.

Reports not objected to may be confirmed without petition; s. 92.

Statement of proposed consequential directions to be left; s. 93.

Order with consequential directions to be drawn up by registrar; s. 94.

Cases in which reports shall not be confirmed without petition; s. 95.

#### Orders.

Form of orders; s. 96.

Orders to be communicated to Masters; s. 97.

Orders to be entered by the registrar, and office copies to be furnished and signed by him; s. 98.

Money orders to be acted upon by Accountant-General as if drawn up by the registrar of

the Court of Chancery. Registrar to certify to Accountant-General; s. 99.

Forging the signature of the registrar or his seal to be felony; s. 100.

These provisions to apply to cases under 8 & 9 Vict. c. 100; s. 101.

#### Visiting.

Lunatics to be visited at least once a year; s. 102.

Medical visitors and future legal visitors to visit either together or alternately; s. 103.

Visitors to report to the Lord Chancellor; s. 104.

Visitors' reports to be kept secret, and destroyed on death, &c.; s. 105.

#### Administration of Estate.

Committee to appear and take admittance to copyholds; in default, lord may appoint attorney to take admittance; s. 106.

Fine upon admittance may be imposed and demanded; s. 107.

If not paid, &c., Lord may enter, and receive profits of the copyhold till he is satisfied, &c. Lord to account yearly, and to deliver up possession on satisfaction; s. 108.

Committee paying fine may reimburse himself out of rents; s. 109.

Unlawful fines may be controverted. No forfeiture for not appearing or not paying fine; s. 110.

Committee may surrender lease and accept renewal; s. 111.

Charges of renewal to be charged on estates; s. 112.

New leases to be to the same uses; s. 113.

Lunatic's property may be sold, mortgaged, &c., for debts, maintenance, &c.; s. 114.

Modes in which future maintenance may be charged when interest not in possession; s. 115.

Expenses of improvements may be charged on estate; s. 116.

Surplus of monies to be of the same nature as the estate; s. 117.

Where property very small, Lord Chancellor may apply same directly for lunatic's maintenance, without grant, &c.; s. 118.

Where lunacy temporary, Lord Chancellor may apply cash arising from income for temporary maintenance, without grant, &c.; s. 119.

Committee may convey land in performance of contracts; s. 120.

Committee may assign business premises; s. 121.

Committee may dispose of undesirable lease; s. 122.

Committee may make agreements under 1 Geo. 4, c. 10; s. 123.

Committee may make building and other leases; s. 124.

Committee may make leases of mines already opened; s. 125.

Committee may, where necessary for maintenance of lunatic or expedient, make leases of mines unopened; s. 126.

Produce of newly-opened mines, where necessary for lunatic's maintenance, to be so ap-

<sup>1</sup> It may be proper to consider whether the power to conduct proceedings in lunacy at Chambers instead of the Court, may not be further extended than here proposed; and thus expense saved to the lunatic's estate.—Ed.



plied; otherwise to be carried to separate account, and be considered real estate; s. 127.

Committee may execute leasing power in lunatic having limited estate; s. 128.

Committee may accept surrender, and make new lease; s. 129.

Fines, how to be paid. On death of lunatic, quality of money arising by fines; s. 130.

Committee may exercise power vested in lunatic for his own benefit, or give consent; s. 131.

Committee may exercise powers vested in lunatic in character of trustee or guardian, &c.; s. 132.

Appointment of new trustees under power to have effect of appointment by Court of Chancery, and like orders may be made as under Trustee Act, 1850; s. 133.

Deeds, &c., executed under Act to be as valid as if lunatic sane; s. 134.

Stock belonging to lunatic may be ordered to be transferred; s. 135.

Stock in name of lunatic residing out of England and Wales may be ordered to be transferred; s. 136.

Who shall be appointed to make transfer; s. 137.

Transfers, &c., to be binding; s. 138.

Indemnity to Bank of England, &c.; s. 139.

Costs may be paid out of estate; s. 140.

Act not to subject lunatic's property to debts; 141.

Powers to extend to colonies, &c.; s. 142.

#### *Traverse.*

Petitions for traverse to be presented within a limited time; s. 143.

Persons not petitioning, or not proceeding to trial within limited time, barred; s. 144.

Lord Chancellor may direct new trials. No person shall traverse oftener than once; s. 145.

Lord Chancellor may, notwithstanding traverse, make orders for management of person and estate; s. 146.

#### *General Orders.*

Power to Lord Chancellor to make general orders; s. 147.

Schedules.

### REMUNERATION OF SOLICITORS.

WHILST the subject of the re-adjustment of the costs to be allowed solicitors is under consideration, it may be useful to extract some passages from a letter written by the Secretary of Lord Chancellor Lyndhurst to the London Commissioners in Bankruptcy, on the 20th November, 1828. They are as follow:—

"It having been communicated to the Lord Chancellor, that considerable diversity of practice existed amongst the different lists of Commissioners of Bankrupts, as to the costs allowed in the taxing of bills for proceedings under commissions of bankrupt, and that a

schedule of such costs as should in general cases be allowed, would be extremely useful, his Lordship referred the subject to four experienced Commissioners for their consideration. The attention of one of these gentlemen, Mr. Pensam, was, from severe indisposition, interrupted before the business was completed; but the other gentlemen have reported to his Lordship as follows:—'In obedience to your Lordship's instructions, we have taken into our consideration the costs incident to proceedings under commissions of bankrupt, and we have prepared two tables, annexed to our report, ascertaining the costs, which we submit as proper to be allowed to the solicitor and to the messenger.

"In the course of our inquiry we have been attended by solicitors of experience and respectability, and by all the messengers; and we beg to lay before your Lordship a concise statement of the principles by which we have been guided in forming our conclusions. The order of the 26th February, 1807, having regulated the costs of solicitors in general business, we have in every instance to which they are applicable, adopted the provisions of that order; in other instances we have endeavoured to ascertain a reasonable compensation for time actually employed, according to the ordinary rate of professional remuneration, conceiving that while on the one hand fictitious and exaggerated charges should be rigorously excluded; on the other, the scale of fees ought not to be reduced so low as to deter practitioners, established in general practice, from undertaking a department of their profession, where integrity and skill are not less useful, nor less requisite, than in any other.

"The proceedings prior to the choice of assignees, are so uniform in all bankruptcies, that few cases will, we believe, occur, for which a provision may not be found in the proposed table. In reference to the subsequent proceedings, we have endeavoured to provide for ordinary occurrences, and to supply some general rules, the application of which in extraordinary cases, must be left to the discretion of the Commissioners; with this caution, that their discretion be confined to the subject of charge; but the rate should always be conformable to the table, whenever the table assigns a rate applicable to the occasion."

It will not be disputed that the fees payable to solicitors in *Chancery* proceedings ought not to be less than in Bankruptcy; yet in the tables above referred to, we find several allowances larger than in the Court of Chancery. We may select as an example, the charges relating to *Special Affidavits*. Not only is a fee allowed for instructions, but one also for settling the affidavit according to the time occupied, and for reading over the ingrossment and the attendance to be sworn, with separate fees for filing affidavits and searching for counter affidavits and procuring office copies.

Now that affidavits may be used as evidence on the hearing of a cause, this class of documents has become of increased importance, and the charges applicable to their careful preparation and completion should be duly increased.

## LEGAL EDUCATION.

### EXAMINATION OF STUDENTS FOR THE BAR.

We are glad to record the following Rules for the Public Examination in Trinity Term next, of Students at the Inns of Court:—

“The attention of the students is requested to the following Rules of the Inns of Court:—

“As an inducement to students to propose themselves for examination, studentships shall be founded of 50 guineas per annum each, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each public examination; and further, the Examiners shall select and certify the names of three other students who shall have passed the next best examinations, and the Inns of Court to which such students belong, may, if desired, dispense with any Terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar. Provided that the Examiners shall not be obliged to confer or grant any studentship or certificate, unless they shall be of opinion that the examination of the students they select has been such as entitles them thereto.”

“At every call to the Bar those students who have passed a public examination, and either obtained a studentship or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day.”

“No student shall be eligible to be called to the Bar who shall not either have attended during one whole year the lectures of two of the readers, or have satisfactorily passed a public examination.”

### “RULES FOR THE PUBLIC EXAMINATION OF CANDIDATES FOR HONOURS, OR CERTIFICATES ENTITLING STUDENTS TO BE CALLED TO THE BAR.

“An examination will be held in next Trinity Term, to which a student of any of the Inns of Court, who is desirous of becoming a candidate for a studentship or honours, or of obtaining a certificate of fitness for being called to the Bar, will be admissible.

“Each student proposing to submit himself for examination, will be required to enter his name at the Treasurer’s Office of the Inn of Court to which he belongs, on or before Friday, the 20th day of May next, and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable

distinction; or whether he is merely desirous of obtaining a certificate preliminary to a call to the Bar.

“The examination will commence on Monday, the 23rd day of May next, and will be continued on the Tuesday and Wednesday following.

“Each of the three days of examination will be divided as under:—

“From half-past nine, A.M., to half-past twelve.

“From half-past one, P.M., to half-past four.

“The examination will be partly oral, and partly conducted by means of printed questions, to be delivered to the students when assembled for examination, and to be answered in writing.

“The oral examination and printed questions, will be founded on the books below mentioned; regard being had, however, to the particular object with a view to which the student presents himself for examination.

“In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the Bar, the Examiners will principally have regard to the general knowledge of Law and Jurisprudence which he has displayed.

“The Reader on *Constitutional Law and Legal History* will expect the students to be acquainted with the following books, which will form the ground of his examination:—

“Hallam’s *Constitutional History*, last vol.

“The Reign of William the Third, in Tindal or Belsham.

“Millar on the English Constitution.

“The Reign of Queen Anne, in Tindal or Belsham.

“The Statute Book during the Reigns of Charles the Second William the Third, and Queen Anne.

“The State Trials during the same period.

“The Parliamentary History during the same time.

“Mably *Droit Public De L’Europe*.

“The Fragment of Sir James Macintosh.

“The First and Fourth Volumes of Blackstone’s Commentaries.

“Those who are candidates only for certificates will be expected to know the last volume of Hallam’s *Constitutional History*, and to answer any general questions on the History of England.

“The Reader on *Equity* will examine in the following books:—

“1. *Misford* on Pleadings in the Court of Chancery; Calvert on Parties to Suits in Equity, chaps. 1 and 2; Smith’s *Manual of Equity Jurisprudence*; the Act for the Improvement of Equity Jurisdiction, 15 & 16 Vict. c. 86.

“2. Sir James Wigram’s *Points in the Law of Discovery*, ‘Defence by Plea;’ Story’s *Commentaries on Equity Jurisprudence*, vols. 1 and 2; the principal Cases in

White and Tudor's Leading Cases, vols. 1 and 2.

"Candidates for certificates of fitness to be called to the Bar will be expected to be well acquainted with the books mentioned in the first of the above classes.

"Candidates for a studentship or honours will be examined in the books mentioned in the two classes.

"The Reader on Jurisprudence and the Civil Law proposes to examine in the following books and subjects :—

"1. *Justinian*—Institutes, book 2, tit. i. ix.

"2. *Gaius*—Institut., lib. ii., sect. 1, . . . 96.

"3. *Story*—Conflict of Laws, chaps. ix. & x.

"4. The Jur. Pignoris. The modern authorities consulted may be Warnkönig—Institut., lib. i., cap. 5; or Colquhoun—Roman Civil Law, book iii., title 17.

"5. The Right of Visitation and Search.

"Candidates for distinction will be examined in all the foregoing books and subjects. Candidates for a certificate will be examined in (1) and (3).

"The Reader on the Law of Real Property proposes to examine in the following books and subjects :—

"CLASS I.—*Williams on Real Property*, 1 Steph. Com. book 2, and *Butler's Notes to Co. Lit.* 191, a, sect. 2, 5; 271, b.

"CLASS II.—Trusts for Accumulation, and the operation of 39 & 40 Geo. 3, c. 98.

"Powers of Sale, and the Liability of Purchasers to see to the application of their purchase money.

"The Statutory Rules of construction laid down by the 1 Vict. c. 26.

"Candidates for a certificate merely, will be examined exclusively in the books comprised in Class I.

"Candidates for a studentship or other honourable distinction, will be examined in the books and subjects comprised in Classes I. and II.

"The Examination in Common Law, with a view to a certificate to be called to the Bar, will embrace the following subjects :—

"1st. The ordinary steps and proceedings in an Action at Law.

"2nd. The elementary principles of the Law of Contracts.

"Candidates for the studentship and for honours will be examined not only on the above topics, but also in the following books and subjects :—

"1st. The Nature and Requisites of Contracts (*Chitt., Jun., on Contracts not under Seal*, chaps. i. and iv.; *Collins v. Blantern*, 1 Smith, L. C. 154, and *Mitchel v. Reynolds*, ib. 171, with notes thereto).

"2nd. The Law of Bailments (so far as treated of in *Chitt., Jun., on Contracts not under Seal* pp. 408—433; and in the note to *Coggs v. Bernard*, 1 Smith, L. C. 82).

"3rd. The Rules of Evidence of ordinary application.

"By Order of the Council,

"W. P. WOOD, Chairman, Pro. Tem.

"Council Chamber, Lincoln's Inn,

"April 11, 1853."

## LAW OF ATTORNEYS.

### TAXATION UNDER ORDERS OF COURSE. —CONCEALMENT OF FACTS.

WE lately noticed a decision of the *Master of the Rolls*, upholding the general rule that a party applying, as a matter of course, to tax a solicitor's bill of costs, should state all the facts relating to the delivery or payment of the bill. In another case, where an order of course had been obtained for the taxation of two bills of costs; one of which had been paid, and the fact suppressed in the statements in the petition, the Court discharged the order altogether.

The *Master of the Rolls* said,

"The client, on the 3rd of January, 1852, obtained an order to tax two bills of costs delivered on the 23rd of January previous. As to one of these bills it has been paid, and, therefore, as to that the order of course is wrong. I have always held, that where there is an important fact relating to the payment or the time of payment of a bill of costs, it is the duty of the person applying to mention it to the officer of the Court, to enable him to consider whether there ought to be an order of course or a special order. Lord Langdale laid down, that the same rule applies to orders of course, as to *ex parte* applications for injunctions, and that if any fact be suppressed, which requires consideration, that alone is sufficient to discharge the order.

In this case I am of opinion, that I must discharge the order to tax altogether, without considering whether, upon a special application, such an order may or may not be obtained. All I decide is, that the order ought to have been obtained, if at all, on special application. *In re Hinton*, 15 Beav. 192.

## INCORPORATED LAW SOCIETY.

### SPECIAL REPORT OF THE COUNCIL.

March 10, 1853.

THE great increase of the business of the Society,—the numerous Bills in Parliament relating to the Law,—the various Rules and Orders of the Courts of Law and Equity, which have been under consideration,—the proposed improvement in the mode of remunerating Solicitors, and other matters,—have induced the Council to prepare a Special Report for the information of the Members at the commencement of the adjourned Session of Parliament, in order that they may be made

acquainted with the proceedings of the Council since the last General Meeting, and lend their assistance in the measures before Parliament, and particularly in regard to the Repeal of the Certificate Duty,—the Removal of the Courts from Westminster,—the Bills for the further relief of the Suitors of the Court of Chancery,—the General Register of Deeds,—the sale and purchase of Land,—the extension of the Jurisdiction of the Courts of Bankruptcy and County Courts,—the Law of Evidence and Procedure, and especially the settlement of a New System of Costs in Equity.

**Annual Certificate Tax.**—The members are aware of the causes which delayed the introduction of the Bill for the repeal of the Certificate Duty in the early part of last year; and after a change of Government, the motion of Lord Robert Grosvenor stood for consideration at the time of the last Annual Meeting in June; but his lordship was unable to make the motion, in consequence of the House having been counted out; and considering the near approach of the dissolution of Parliament at that time, it was deemed inexpedient to renew the notice in that Session.

The Council, therefore, suggested to the attorneys and solicitors in the country with whom they were in communication, to exert their influence with the candidates at the General Election, to consider the justice of the claim, with a view to its early introduction in the new Parliament.

The Council in the following November renewed their application to Lord Robert Grosvenor, who with so much kindness, patience, and talent, had for several years bestowed his attention to the subject, and solicited him to appoint a meeting with the new Chancellor of the Exchequer; and his lordship immediately addressed the Chancellor of the Exchequer, in the hope and expectation that the repeal of this oppressive and anomalous tax would be included in the financial plan.

The Chancellor of the Exchequer, on the 17th November, in acknowledging the receipt of his lordship's letter, stated—

“That having had an interview only a few months before with a deputation from the Law Society, he felt that he was quite master of the subject, and hoped therefore that he would not be pressed for an interview, more especially at a time when every moment was fully occupied.”

It will be recollected that, although the late Chancellor of the Exchequer in stating his financial plan in December last, gave no intimation of the intention of the Government to relieve the Profession from this manifest injustice, yet in the course of his speech—

“He distinctly and repeatedly recognised the claims of *classes* which were burthened with imposts from which the rest of the community were free;”—stating that “it was highly expedient that well founded claims to the consideration of Parliament should be entered into, their merits ascertained, and all real grievances be remedied.”

It appeared useless to attempt to bring on the motion in the short Session before Christmas, which terminated in another change of the Administration; but early in January the Council again applied to Lord Robert Grosvenor, soliciting him to procure an appointment with the present Chancellor of the Exchequer.

They also presented a memorial to the Chancellor of the Exchequer stating the grounds of the claim to relief, and informing him that Lord Robert Grosvenor had consented to renew the application to Parliament in the present Session, and asking leave to wait on him at his convenience. In answer, they were informed that the Chancellor of the Exchequer, after some interval of time had passed, would make an appointment with a view to receiving the Council of the Society. In addition to these steps, several members of the Council attended Lord Robert by appointment, on the 11th February; and it was then arranged that his lordship should give notice of a motion, as early as possible, to bring in the Bill, and would again communicate with the Chancellor of the Exchequer. His lordship accordingly gave notice of his motion for the 10th March, on which day the subject was brought before the House of Commons, and the votes in favour of the repeal of the tax were 219, and against it 167,—leaving a majority of 52 in favour of the Profession. The Bill has been read a first time, and the second reading will take place after the Easter holidays.

It is suggested to the members of the Society and the Profession in general, that they should individually continue to exert their influence with their representatives and clients in Parliament in support of this just and important claim.

**Equity Practice.**—It will be recollected that the Council, with the aid of several members of the Society, devoted much time and attention to the consideration of the proposed alterations and improvements in the jurisdiction and course of proceeding in the Courts of Equity, regarding which they held very numerous meetings; and that the result of their labours was stated in a voluminous report on the 2nd December, 1851, of which printed copies were sent to all the members of the Society, and to the Judges, Commissioners, leading Counsel, and principal officers of the Court. It was also printed and circulated amongst the papers of the House of Commons. The Commissioners made their report on the 27th Jan. 1852, and the several Bills which were brought into Parliament for abolishing the Masters' Offices, for the improvement of Equity Procedure, and for the relief of the Suitors, received the best attention of the Council and their Committee.

The Council had no opportunity of considering the various sets of Orders which were from time to time issued, during the last long Vacation and subsequently, until after their publication, when the Orders were immediately printed, and transmitted to the members. It may be useful to specify the dates and general scope of the Orders. They are as follow:—

1852.—July 27.—Relating to the office of the Master of Reports and Entries and countersigning cheques by the Accountant-General.

July 28.—Relating to payments to surviving representatives.

Aug. 7.—Carrying into effect the improvement of the Jurisdiction of Equity Act.

Aug. 7.—As to appeals from, or the enrolment of, any decree, order, or dismissal.

Sept. 7.—For the payment of fees by stamps.

Oct. 16.—As to proceedings at the Equity Judge's Chambers.

Oct. 23.—Fees of office and solicitors' charges under the Masters' Office Abolition Act.

Oct. 25.—Under the Suitors' Relief Act :—as to office copies,—the regulation of the Accountant-General's Office,—the abolition of fees,—and the collection of fees by stamps.

Nov. 10.—Relating to office copies in Chancery, and the calculation of folios.

Nov. 16.—Relating to office copies in lunacy, and the calculation of folios.

Dec. 3.—Relating to the payment of fees by adhesive stamps.

Dec. 4.—As to fees at the offices of the Taxing Masters, the Registrars, and the Record Clerks.

Dec. 10.—As to deposits on appeals.

Dec. 16.—As to business to be referred to the conveyancing counsel, under the 15 & 16 Vict. c. 80, s. 41.

Dec. 24.—The references by the Masters in Chancery to conveyancing counsel.

Rules and regulations were also made under the Patent Law Amendment Act, dated the 1st and 15th October, and 8th November, 1852, and which were also transmitted to the members.

The Council, from information and suggestions received, as well from the members of the Society generally, as from the experience derived in their own offices, of the practical operation of the Acts and Orders, have had under their consideration various points arising out of the great changes which have been thus effected.

In the first instance, it was apprehended that the practice of printing Bills would be attended with much inconvenience and delay, and they took into consideration a proposed memorial to the Lord Chancellor, for suspending the provisions of the 15 & 16 Vict. c. 86, as to printing bills and claims in Chancery; but they were of opinion that it was doubtful whether the powers thereby conferred on the Lord Chancellor, of discontinuing or suspending the provisions as to printing bills and claims, and of reviving the previous practice as to filing bills and claims, could be exercised until the provisions had come into operation. The Council were further of opinion, that the only alternative given to the Lord Chancellor was that of reviving the system of serving subpoenas, filing bills, and obtaining office copies. They therefore deemed it inexpedient, at present, to interfere with the practice of printing

bills and claims, but to wait the practical effect of the alteration. If the anticipated objections of increased expense and delay from printing, should actually occur, an application to the Lord Chancellor, supported by instances of the evils anticipated, might then be made with a view to the substitution of written for printed copies.

The late Lord Chancellor did the Council of the Society the honour of requesting information and suggestions relating to the delay and inconvenience which were experienced in carrying into effect the new system of paying the fees of office by means of stamps.

Several members of the Council, extensively engaged in the practice of the Court of Chancery, held many meetings on the subject, and received suggestions from other practitioners; and the Council having given their best attention to the matter, submitted to his lordship a statement with regard to the new system, and their suggestions for remedying some of the inconveniences which it had introduced into the practice.

The members are aware that further Orders were made with the view of removing this practical grievance.

It may be also mentioned, that the Master of the Rolls did the Council of the Society the honour of requesting them to select, from a list which he furnished, five gentlemen from the Profession, who would be willing to accept the office of one of his chief clerks, under the Act for the abolition of the Masters' Offices, and whom they considered best competent to discharge the duties of it, in order that his Honour might select one of those five for that purpose. The Council anxiously devoted their attention in making the selection required, and after a personal conference on the subject, transmitted the names of five gentlemen, whom they deemed eligible for the office, and one of whom his Honour accordingly appointed.

*Taxation of Conveyancing Costs in Chancery.*—On the 24th December last, the Lord Chancellor intimated to the Taxing Masters—

"That in his lordship's opinion, where, in pursuance of any direction by the Court or Judge, or of any request by a Master in Ordinary, drafts are settled by any of the conveyancing counsel, under 15 & 16 Vict. c. 80, s. 41, the expense of procuring such drafts to be previously or subsequently settled by other counsel, is not to be allowed on taxation, as between party and party, or as between solicitor and client, unless the Court shall specially direct such allowance. This intimation, however, is not to prevent the allowance of the expense in cases which may already have occurred, where, in the judgment of the Taxing Master, there has been a reasonable ground for laying the papers before other counsel."

This regulation has not been the subject of any formal Order of Court; but the Council deem it proper that the Profession should be made acquainted with the practice now adopted by the Taxing Masters.

*Remuneration of Solicitors.*—It is well

known to practitioners, that the alterations effected under the recent Acts and Orders, both in the nature and form of the pleadings, and the various proceedings in a suit in Equity, have largely reduced the emoluments of solicitors,—whilst their personal labour, and under a new system, their responsibility have been increased. In the Report of the Council of 2nd December, 1851, it was stated that no reform in the practice of the Court could be complete or satisfactory, unless the subject of Equity costs were examined and settled upon just and intelligible principles; and it was pointed out that there are inconsistencies in the scale of allowance, which work in justice both to the suitor and the solicitor.

The late Master of the Rolls, Lord Langdale, in several of his judgments on the subject of solicitors' costs, regretted that, according to the existing rules of taxation,—“The charges allowed for services of the utmost value and importance, truly rendered to their clients, were so inadequate that, unless some compensation were allowed in another way, no adequate remuneration would upon taxation be given for the transaction of the whole business.”

Now, “the compensation in another way,” by the length of the papers and matters of routine, has to a considerable extent been abolished, and in other instances largely reduced. The Council have, therefore, authorised their Equity Committee—

“To ‘inquire into the existing scale of Equity Costs, and to report what alterations ought to be made therein; so that the amount of remuneration to the solicitor may bear a fair proportion to the skill and labour employed, and responsibility incurred, in the carrying on proceedings in Equity;’ and they have authorised the Committee ‘to call in the assistance of any gentlemen, members of this Society, in considering the subject, and to report their views to the Council.’”

The Committee have accordingly requested the aid of several members of the Society, of large practice and experience. A very valuable report has been received by the Council, a memorial on the subject has been presented to the Lord Chancellor, and the Committee are still engaged in preparing a Schedule of proposed fees.

**Common Law Practice.**—During the progress of the inquiries before the Common Law Commissioners for the Improvement of the Practice and course of proceeding in the Common Law Courts, the Council were invited to send suggestions to the Commissioners, and received from them copies of the various suggestions under their consideration. The Council have communicated with many members of the Society, from whom they received valuable suggestions, made their report to the Commissioners; and whilst the Common Law Procedure Bill was before Parliament, they had interviews with some of the Commissioners, and several communications with Law Lords on the subject, to whom they submitted their suggestions.

After the Act passed, it became necessary to frame rules and regulations for carrying it into practical effect. The Judges determined to annul all former Rules of Court, and to incorporate into one body of General Rules, whatever was deemed necessary to retain, together with the New Rules arising out of the recent Statute. Some of the Judges and Masters were delegated to prepare this Code of Practice, and the Council were favoured by the Judges with copies of the proposed New Rules, and were invited to make their suggestions. It was necessary that the rules should be settled as soon as possible, and consequently a short time only was allowed to deliberate upon the numerous details of this important subject.

The suggestions which occurred to the Council were respectfully submitted to the consideration of the Judges, with reasons in support of them, particularly on the Inspection and Admission of Documents,—Amendments,—the Practice at the Judges' Chambers,—the Service of Notices, Rules and Orders,—Proceedings in Ejectment,—Special Juries,—Writs of Execution, &c.—A suggestion was also made, regarding the residence of attorneys upwards of three miles from the Post Office; and it was proposed to keep a Residence Book for the general convenience of the Profession. Many of these suggestions were adopted.

The Council especially noticed the large increase in the amount of the Office Fees which the Treasury had fixed on proceedings in the progress of a cause, though the fees at the trial were reduced; and the Council were informed that, at the expiration of six months, when the receipts and payments were ascertained, the scale of fees would be revised and reduced.

The General Orders of Hilary Term, 1853, consolidating and amending all the Rules in the Three Superior Courts of Common Law have been printed for the Society, and despatched to the members.

**Common Law Costs.**—The Council were also favoured by the Judges with the proposed directions to the Masters for the Taxation of Costs, in order that they might make such suggestions as occurred to them; and after much consideration, the Members of the Council, who had an opportunity of considering the proposed scale, attended the Masters several times, and explained the grounds of the proposed alterations and additions.

The principal suggestions related to the charge for Declarations,—Serving Process and Subpoenas,—Instructions for Briefs,—Special Juries,—Admissions,—Attending Trials in Town and Country,—Judgments on Warrants of Attorneys,—Fees to Counsel's Clerks,—and Allowances between Attorney and Client where not allowed between party and party,—with discretionary power to the Master in difficult or important cases to increase the ordinary allowances.

Many of the suggestions were adopted by the Masters, and others were reserved for the consideration of the Judges; and three members of the Council attended a meeting of the Judges

of the Courts of Common Law at Serjeants' Inn Hall,—one of the Masters from each Court being also present. The deputation submitted to the Judges the proposed additional allowances to be comprised in the Scale of Costs, most of which, after long discussion and consideration, were approved by the Judges.

The Scale of Costs to be indorsed on Writs of Summons, under the Common Law Proce-

dure Act, 1852, in cases of Judgment by default, with the fees to be taken in the Courts and Law Offices, pursuant to the 13 & 16 Vict. c. 73, as settled by the Treasury, on the 22nd November, 1852, and the Directions of the Judges to the Masters on the Taxation of Costs, dated 27th January, 1853, have been printed and sent to the members.

[To be continued.]

## ADMISSION OF ATTORNEYS.

*Easter Term, 1853.*

ADDED TO THE LIST PURSUANT TO JUDGE'S ORDER.

**Queen's Bench.**

*Clerks' Names and Addresses.*

*To whom Articled, Assigned, &c.*

Bladon, William Septimus, Uttoxeter; and Cape of Good Hope . . . . .	W. T. Keightley, Liverpool
Hamner, Philip, 15, Somerset Street, Portman Square; and Chester . . . . .	Messrs. Potts and Brown, Chester
Julius, Herbert Amelius, Wakefield . . . . .	J. Scholey, Wakefield
Kitchener, William Orbell, Newmarket . . . . .	W. C. Kitchener, Newmarket
Moore, William Walter Kelland, 5, Blenheim Terrace, St. John's Wood; and Tooley Street . . . . .	H. W. Hooper, Exeter
Nash, Alfred Dormor, 47, Great Coram Street, Russell Square . . . . .	J. I. Wathen, Bedford Square; H. Crocker, Chancery Lane; A. Mayhew, Carey Street
Warwick, James Bailey, 17, Upper North Place, Grays Inn Road . . . . .	M. P. Moore, New Sleaford

## TAKING OUT AND RENEWAL OF CERTIFICATES.

**Queen's Bench.**

*Last day of Easter Term, 1853.*

Capreol, Harry Peter, 16, Featherstone Buildings; and Plumstead.  
Fairbairn, Peter, 5, Duke Street, Westminster.  
Gough, Charles, Souldern, Oxfordshire; and Llantisillio, Denbigh.  
Knipe, Francis, 15, Wilson Street, Gray's Inn Road.  
Marshall, William, George Street, Aston, Warwickshire (*re-admission*).

AT THE JUDGES' CHAMBERS.

*10th day of May, 1853.*

Allen, Mundeford, Chigwell Row, Essex.  
Blundell, William, Birbury, Warwick.  
Bourne, James Samuel, Dudley, Worcester.  
Brown, R. C., 53, Murrey Street, Hoxton; Birkenhead; and Liverpool.  
Dixon, F. S. Devizes; East Street, Brighton; 53, Brompton Row.  
Evans, William, 4, Wintoun Place, Blackheath.  
Fairbairn, Peter, 5, Duke Street, Westminster.  
Gould, Daniel, Honiton, Devon.  
Hannam, Richard, Clixby; and Moorgate, Nottinghamshire.  
Hill, Thomas, 51, Addington Square, Camberwell.

Jackson, John Fortin, 6, Portsmouth Street, Lincoln's Inn.

Jackson, Joshua, Rotherham, York.

Jervis, Frederic Alackall, Halifax.

King, G. F., 3, Manor Villas, Holloway; Croydon; 7, Lothbury.

Lawrence, Nath. Tertius, 15, Regent Street.

Lowe, George Burn, Dudley, Worcester-shire.

Taylor, Robert, 4, Vere Street, Oxford Street.

Van Sommer, Jas., High Cross, Tottenham.

Williams, Edward, 3, Bedford Street, Red Lion Street; and Swansea.

Willins, George, 113, Fenchurch Street.

Warrilow, William, Hanley, Stafford.

RE-ADMISSION.

*At the Rolls.*

*Notice of Application to be re-admitted in Trinity Term, 1853.*

Simons, William, 15, Farnival's Inn, Holborn; and 8, Plowden's Buildings, Temple.

## NOTES OF THE WEEK.

NEW COMMISSIONER IN LUNACY.

THE Lord High Chancellor having appointed Lieut.-Colonel Henry Morgan Clifford, of Llantillo in the county of Monmouth, M. P., to be a Commissioner in Lunacy, in the room of the Right Honourable Lord Seymour, M. P., resigned; Lieutenant-Colonel Clifford was

thereupon duly sworn in as Commissioner on the 13th instant, and on the same day took his seat at the Board accordingly.—From the *London Gazette* of 19th April.

#### REPEAL OF CERTIFICATE DUTY.

Since the Article at page 489 was written, we understand that the promoters of the measure have applied to the Chancellor of the Exchequer to receive a deputation on the subject as early as possible. In the meantime it is desirable to ascertain the views of the solicitors in the country who have petitioned for the total repeal of the tax. They have to consider whether the Government offer should be accepted as an instalment of justice,—or exertions used further to extend the remission of the Certificate Tax, without reducing the Stamp on Articles,—or whether “the Bill, the

whole Bill, and nothing but the Bill,” should be urged forward?

It appears that communications have been made to all the Law Societies in England, Ireland, and Scotland, and before the time appointed for the second reading of the Bill, the sentiments of the Profession will be very generally collected. We have already heard the opinions of many solicitors both in town and country, but as the case is under the management of very competent persons, we shall not interfere with the course of proceeding it may be deemed advisable to adopt.

#### NEW MEMBER OF PARLIAMENT.

*Thomas Greene, Esq.*, for Lancaster, in the room of *Robert Baines Armstrong, Esq.*, whose election has been adjudged void.

### RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

#### Lords Justices.

*In re Hakewill.* April 16, 1853.

MARRIED WOMAN.—PETITION UNDER 2 & 3 VICT. C. 54.—WITHOUT NEXT FRIEND.

*A motion was refused to discharge an order which had been made for leave to a married woman living apart from her husband, to present a petition under the 2 & 3 Vict. c. 54, for the custody of such of her children as were under seven years of age, in forma pauperis, without the intervention of a next friend, on the ground of the concealment of the fact that she had several relatives in good circumstances, it not appearing any application had been made to, and not been refused by them.*

THIS was a motion to discharge an order which had been made on February 24 last (reported, *ante*, p. 339), for leave to Mrs. Hakewill, a married woman, who was living apart from her husband, to present a petition *in forma pauperis* without the intervention of a next friend, under the 2 & 3 Vict. c. 54, for the custody of such of her children as were under seven years of age.

*Glass* in support, on the ground the fact had been concealed from the Court, that she had several relatives in good circumstances, and there was no statement that she had applied to them, and that they had refused to act as her next friend.

*Wilcock* and *C. M. Roupell*, contra, were not called on.

The Lord Justices said, it was not shown that any part of the affidavit on which the order was obtained was untrue, or that any application had been made to and not been refused

by her family, and the motion was therefore refused.

*In re Hennet.* April 15, 1853.

BANKRUPTCY.—PETITION FOR ADJUDICATION.—TOWN OR COUNTRY ADJUDICATION.—DESCRIPTION OF BANKRUPT.

*An appeal was dismissed from Mr. Commissioner Evans refusing to annul a London adjudication in bankruptcy, where it appeared the bankrupt carried on business in London, at Bristol, and also in Staffordshire, but the description in the London petition was directed to be enlarged from “railway contractor” to “engineer, contractor, shipowner, and timber merchant,” in accordance with the description in the petition presented in the Bristol district court.*

THIS was an appeal from the decision of Mr. Commissioner *Evans*, refusing to annul an adjudication in bankruptcy which had been made in London against Mr. *Hennet*, as of No. 24, Duke-street, Westminster, “railway contractor.” The application was on behalf of petitioning creditors in the Bristol District Court against the bankrupt as “engineer, contractor, shipowner, and timber merchant.” It appeared he carried on business at Bristol and also in Staffordshire, as contractor, timber merchant, and shipowner. The Commissioner had also refused to direct the proceedings to be transferred to the District Court.

*Swanston, Bacon*, and *Terrell* in support, on the ground the creditors would be misled by the description as to the identity of the bankrupt.



*Russell, Bagley, and Cairns, contra*, were not called on.

*Roll for the bankrupt.*

The *Lords Justices* said, that as the property of the bankrupt was situated and his business carried on in various places, it was a reason for retaining the adjudication in London. Although it was highly improbable the creditors could be misled by the shorter description, yet the description should be enlarged so as to include the full description of the country petition. The creditors who should attend on the day appointed for voting in the choice of assignees might then vote, and a future day, not sooner than ten days later, be appointed by the Commissioner for the remainder to vote, when the choice could be completed. The respondents and the bankrupt to have their costs out of the estate, and the appellants to pay their own costs.

*Wilkinson v. Bewick.* April 19, 1853.

WILL.—CONSTRUCTION.—WHAT NOT INCLUDED IN ESTATES BY “INHERITANCE.”

*A testator gave, on certain trusts, all his estates of which he was already or might thereafter come in possession by inheritance from his father. It appeared he was in possession, at the date of the will, of estates answering the description, and also of others which he had received by gift during his father's life, but the former were not sufficient for the trusts without the latter: Held, on special case that these estates were not included within the description of estates by inheritance, and were not subject to the trusts.*

THE testator in this special case, by his will gave on certain trusts therein specified, all his freehold and other estates in the county of Durham, of which he had already or might hereafter come in possession “by inheritance” from his father. It appeared that he had entered into some freehold property, which had been given him by his father during his lifetime, but that at the date of the will he was possessed of estates within the meaning of the term inheritance from his father, but that they were insufficient for the purposes of the trust without the other estates.

*Wigram, Bacon, Malins, Toller, Burdon, and Holt*, for the several parties.

The *Lords Justices* said, that these estates were not included within the description in question, and were not therefore subject to the trusts.

April 15.—*In re Coulston*—Order for appointment of new trustees.

— 18.—*Lucas v. Cutts*—Appeal from Vice-Chancellor Stuart dismissed with costs.

*Master of the Rolls.*

*Ainslie v. Sims.* April 15, 1853.

SECURITY FOR COSTS.—SCOTCHMAN.

*Order on defendant to give security for costs,*

*who was a Scotchman by birth, having his place of business and domicile there, and only occasionally resided in lodgings which he had taken in London.*

*R. Palmer and Lake Russell* appeared in support of this application for an order on the defendant to give security for costs. It appeared that he was a Scotchman by birth, having his place of business and domicile in that country, but that he had taken lodgings in London, where he occasionally resided.

*Roupell and Martindale* for the defendant.

The *Master of the Rolls* made the order as asked.

April 14.—*Rochdale Canal Company v. King*—Injunction granted.

— 15.—*Ashkam v. Barker*—Bill dismissed, with costs.

— 16.—*Duke of Beaufort v. Patrick*—Judgment herein.

— 18.—*Pulsford v. Richards*—Bill dismissed, with costs.

— 18.—*In re Marshall*—Cur. ad. vult.

— 19.—*In re Blackheath Chapel Charity*—Order for appointment of new trustees and reference to the chief clerk.

*Vice-Chancellor Kinderley.*

*Lauder v. Weston.* April 16, 1853.

BREACH OF TRUST.—PARTIES.—REPRESENTATIVES OF ESTATE OF DECEASED TRUSTEE.

*A suit instituted to have the loss of a trust fund made good out of the estate of a deceased trustee, which had been lent to L. by such trustee, and the defendant, his co-trustee, but been repaid and re-advanced to the same party after his death by the defendant, was directed to stand over, in order to have the estate of such deceased trustee represented.*

IT appeared that on the marriage of Mr. and Mrs. Lauder in 1810, a sum of 3l. per cent. consols was settled upon certain trusts, and in 1815 was transferred to the joint names of Mr. Weston (the defendant) and Mr. Thomas Parr as trustees, who advanced it to the husband. Mr. Parr died in 1824, and a portion of the trust fund was re-paid in 1826 to the defendant, who again advanced it to the husband, and upon his insolvency the fund was lost, and this suit was instituted to have the loss made good out of Mr. Parr's estate.

*Bacon and Freeling*, for the defendant, took an objection that the estate of Mr. Parr was not represented.

*J. H. Palmer and Welford* for the plaintiffs.

The *Vice-Chancellor* allowed the objection, and directed the case to stand over for the purpose of adding such representative.

*Kirke v. Pritchard.* April 19, 1853.

RESTORING CAUSE STRUCK OUT OF THE PAPER ON ABSENCE OF COUNSEL.

*The Court refused to restore to the paper a*

cause which had been struck out on the absence of counsel, but directed the case to come on as a short cause at an early day.

THIS was an application to restore this case to the paper, which had been struck out owing to the absence of counsel.

Boyle, in support, stated the lists were not affixed at half-past five at the Registrar's Office when his client attended to ascertain when the cause would come on.

The Vice-Chancellor said, that although he was most anxious to consult the convenience of counsel, the rule which had been laid down must be adhered to, but the case might come on at an early day as a short cause, and directions would be given for the list to be properly affixed outside the Courts at Lincoln's Inn.

April 14.—*Trimmer v. Danby*—Order for cause to be advanced.

—14.—*Attorney-General v. Overton*—Judgment as to costs.

#### Vice-Chancellor Stuart.

April 16.—*Mounsey v. Elmslie*—Part heard.

—18.—*In re Ramsay's Charity*—Leave to two of the Governors of Christ's Hospital to go in before the Master with scheme for application of this charity, of which they were trustees.

—19.—*Cookson v. Lee*—Part heard.

#### Vice-Chancellor Staddon.

*Poole v. Bott*. April 14, 1853.

DEVISE OF PROPERTY.—CONDITIONAL ON ENTERING INTO BONDS NOT TO MARRY PARTY NAMED.—LEGALITY OF.

*The Court held that devisees of property, which was to go over on their marrying or illegally cohabiting with certain persons, and which was only to be paid over to them on their entering into bonds not so to marry or cohabit, could not be called on to enter into such bonds.*

THE testator, by his will, devised certain property to trustees therein named, in trust for his sons, with a proviso, that in case they married or illegally cohabited with certain parties mentioned, their several and respective shares should go over as if they had died under 21 years of age, and with a direction that they should execute bonds not so to marry or illegally cohabit, before their several and respective shares were paid over. The direction of the Court was accordingly sought on behalf of the trustees, as to the course to be pursued.

C. Hall for the trustees; Follett, C. Chapman Barber, and E. F. Smith, for the devisees; Snape for the parties entitled, if the gift over took effect.

The Vice-Chancellor said, the Court would not require the bonds to be given, which might lead to inquiries calculated to disturb the peace of families.

April 14.—*Jones v. Batten*—Injunction refused.

—16.—*Lumley v. Robbins*—Decree for specific performance of contract.

—15, 16.—*Edelston v. Vick*—Injunction granted restraining use of labels.

—18.—*Brown v. Sewell*—Inquiry directed as to compensation for loss of deeds by executors advancing money on mortgage.

—19.—*Morier v. Budd*—Order for sale of valuable book at chambers.

—19.—*Spurrill v. Spurrill*—Cur. ad. vult.

#### Court of Queen's Bench.

*Pike v. Dear*. April 16, 1853.

ACTION FOR INJURIES SUSTAINED BY FALLING THROUGH FLOORING.—DUTY OF DEFENDANT.—CAUTION.

*The plaintiff, who went to the defendant to take an order for a packing case for a picture, had been induced by the defendant's example to jump over a counter in order to get at the picture, and in so doing fell through the glass floor into the shop below, and sustained injuries: Held, refusing a rule for a new trial, that the plaintiff was entitled to recover, as it was the defendant's duty to have cautioned the plaintiff as to the dangerous nature of the flooring.*

THIS was an action brought to recover damages for injuries sustained by the plaintiff, who had, it appeared, gone to the defendant to take orders for making a packing case for a picture, and had followed him into an upper room where it was, when he was induced by the defendant's example to jump over a counter to get at the picture, and fell through the glass floor into the shop underneath, whereby he sustained the injuries in question. On the trial before Lord Campbell, C. J., at the sittings in London after Hilary Term last, the plaintiff obtained a verdict with 30l. damages; and this motion was now made for a new trial on the ground of misdirection and that the verdict was against evidence.

Bramwell, Q. C., in support.

The Court said, that it was the duty of the defendant to have cautioned the plaintiff of the dangerous nature of the flooring, and the rule was accordingly refused.

*Bristow v. Halford*. April 18, 1853.

ACTION BY EXECUTRIX.—EXEMPTION FROM COSTS UNDER 3 & 4 WM. 4, C. 42.—WHAT AFFIDAVIT SHOULD STATE.

*Held, that in order to entitle a plaintiff to be exempted from the payment of costs under the 3 & 4 W. 4, c. 42, s. 31, in an action brought by her as executrix, in which the defendant obtained a verdict, the affidavit in support of the application must not only state she was advised, but also that she "believed," she had a good cause of action.*

THIS was a motion for a rule nisi under the 3 & 4 Wm. 4, c. 42, s. 31, for the plaintiff to be

exempted from the payment of costs in this action, which she had brought as executrix of her deceased husband to recover the sum of 100*l.* for the price of a horse. On the trial, before Lord Campbell, C. J., at the last Sittings at Westminster, it appeared that the action was founded on a memorandum which was found amongst the papers of the deceased and was signed by the defendant, but the evidence showed that the part relating to the payment of the sum in question was interpolated by the deceased after having been signed, and the defendant thereupon obtained a verdict.

Pearson in support, on an affidavit made by the plaintiff stating she was advised she had a good cause of action, which she was therefore bound to bring.

The Court said, that no misconduct was imputed to the defendant, and that the affidavit was insufficient in not stating she believed, as well as having been advised, she had a good cause of action, and the rule was therefore refused.

April 15.—*Cross v. Oliver*—Rule nisi to set aside verdict for plaintiff and for new trial.

— 15.—*Regina (ex parte Finch and others) v. Great Western Railway Company*—Rule nisi for mandamus on defendants to complete railway.

— 16.—*Regina (ex parte Rolt) v. Clayton*—Rule nisi for criminal information.

— 16.—*Regina v. Thwaites*—Rule discharged, without costs, for *quo warranto* on Town Councillor of Blackburn.

— 18.—*Harman v. Johnson*—Rule nisi for new trial on the ground of misdirection.

— 19.—*Bayard v. Douglas*—Rule nisi for reduction of verdict.

— 19.—*Regina v. Sheffield Gas Company*—Rule nisi on leave reserved to enter verdict for defendants.

### Queen's Bench Practice Court.

(*Coram Mr. Justice Coleridge.*)

*Regina (ex parte Dimsdale) v. Saddlers' Company.* April 16, 1853.

COMMON LAW PROCEDURE ACT.—MANDAMUS, RETURN TO.—AMENDMENT.

Rule nisi granted, under the 15 & 16 Vict. c. 76, s. 52, to amend certain parts of the return to a mandamus on a company, to restore the prosecutor to the office of assistant, or in default, for such parts to be struck out with costs—the objection being, that the grounds set out for such removal were vague and uncertain.

THIS was a motion for a rule nisi under the 15 & 16 Vict. c. 76, s. 52,<sup>1</sup> to amend certain

parts of the return to a mandamus on the defendants to restore the prosecutor to the office of an assistant to them, or in default to show cause why such parts should not be struck out, with costs to be paid by the defendants.

Lush, in support, urged the grounds set out in the return for the removal were vague and uncertain.

The Court granted a rule.

April 15.—*Ex parte Legg*—Rule nisi for *habeas corpus*.

### Court of Common Pleas.

*Castrick v. Page.* April 15, 1853.

LONDON SMALL DEBTS' ACT.—ACTION ON BILL OF EXCHANGE ABOVE 20*l.* BUT UNDER 50*l.*—SUGGESTION.—COSTS.

Rule absolute to enter a suggestion to deprive the plaintiff of costs in an action brought on a bill of exchange for 27*l.* under the City of London Small Debts' Act, 15 & 16 Vict. c. lxxvii., s. 119.

THIS was a motion to enter a suggestion under the 15 & 16 Vict. c. lxxvii., s. 119,<sup>1</sup> to deprive the plaintiff of costs in an action brought on a bill of exchange for the sum of 27*l.*

Paterson in support, referred also to s. 120.<sup>2</sup> Pulling, contra.

The Court said, that under the Statute, if a plaintiff recovered less than 20*l.* he was entitled to no costs, and no suggestion was required, and if above that sum and under 50*l.* he recovered none without a certificate, and the rule was accordingly made absolute to enter a suggestion.

same, and also respecting the costs of the application, as such Court or Judge shall see fit."

<sup>1</sup> Which enacts, that "if any action shall be commenced after the commencement of this Act in any of her Majesty's Superior Courts of Record, for any cause" "for which a plaintiff might have been entered in the Court holden under the provisions of this Act, and a verdict shall be found for the plaintiff for a sum not more than 50*l.* if the said action is founded on contract," "the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the Judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such Superior Court."

<sup>2</sup> Which provides, that "if any action commenced after the passing of this Act in any of her Majesty's Superior Courts of Record, in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum less than 20*l.*," "the plaintiff shall have judgment to recover such sum only, and no costs;" "and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs."

<sup>1</sup> Which enacts, that "if any pleading be so framed as to prejudice, embarrass, or delay the fair trial of the action, the opposite party may apply to the Court or a Judge to strike out or amend such pleading, and the Court or any Judge shall make such order respecting the

**Brown v. Smith.** April 18, 1853.

**SLANDER.—WORDS SPOKEN OF PLAINTIFF IN WAY OF BUSINESS.—SPECIAL DAMAGE.**

Defendant stated that the plaintiff was considerably indebted to him, and that he would make him a bankrupt: Held, that an action would lie for slander in these words. Special damage was alleged, that a person named S., who was in the habit of transacting business with the plaintiff, refused to let him have goods which he had purchased, unless previously paid for, and the plaintiff obtained 100*l.* damages. The Court refused a rule nisi for a new trial, on the ground of the damages being excessive.

THIS was a motion for a rule nisi for the new trial of an action brought to recover damages for slander by reason of the defendant's stating the plaintiff was considerably indebted to him and that he would make him a bankrupt, and alleged as special damage that a person named Stringer, who was in the habit of transacting business with the plaintiff, had declined to continue the same, and refused to deliver certain goods purchased by the plaintiff unless previously paid for. On the trial before *Jervis, C. J.*, the plaintiff obtained a verdict, with 100*l.* damages.

*Brawell*, in support of the motion, on the ground the damages were excessive and of misdirection.

The Court said, the words were actionable, being spoken of the plaintiff in the way of his trade, and the rule was refused.

April 15.—*Perry v. Monmouthshire Railway and Canal Company*—Rule nisi to enter a nonsuit on leave reserved.

—16.—*Dalton v. Midland Railway Company*—*Cur. ad. vult.*

—16.—*Gibbs and another v. Flight and another*—Rule nisi to set aside rule of Court and subsequent proceedings.

—18.—*Ford v. Sykes*—Rule refused for new trial on the ground of verdict being against evidence and perverse.

—19.—*Williams v. Rodway*—Rule nisi for new trial on the ground of verdict being against evidence.

—19.—*Coombe v. Symond*—Rule refused for new trial on the ground of misdirection.

### Court of Exchequer.

*Place v. Potts and another.* April 15, 1853.

**PROHIBITION.—PROCEEDING ON BOTTOMRY**

**BOND IN ADMIRALTY COURT.—ACTION FOR FREIGHT ON CHARTER-PARTY.**

Proceedings were taken in the Admiralty Court by the obligee of a bottomry bond given by the captain of a ship for repairs, and on the vessel being lost, the owner brought an action against the charterers for freight. A motion was served from the Admiralty Court on the plaintiff, and the defendants to bring into Court the sum in dispute between them, and any sums received by the plaintiff for freight. A motion for a prohibition to stay such proceedings in the Admiralty Court was refused.

THIS was a motion for a prohibition to stay proceedings which had been taken in the Court of Admiralty, by the obligee of a bottomry bond, given by the captain of the ship *Brilliant*, for repairs in a foreign port. It appeared that the vessel was chartered by the defendants, and that on her being lost, the plaintiff, the owner, had brought this action for freight, under the charter-party, and that a motion had been served from the Court of Admiralty on the plaintiff and defendants, to bring into that Court the sum in dispute between them for freight, and any sums the plaintiff might have received on account of freight.

*C. E. Pollock* in support.

The Court said, the obligee of the bond was entitled to enforce his claim in the Admiralty Court, and the liability of the defendants for freight on the contract had nothing to do with the bond, whatever might have been the result of the proceedings in that Court, and the motion would therefore be refused.

April 15.—*Barnet v. Ravenshaw*—Rule nisi to rescind Judge's order to set aside warrant of attorney.

—16.—*Regina v. Bevington*—*Habeas corpus* granted.

—16.—*Davenport v. James*—*Cur. ad. vult.*

—18.—*Wright v. Greenwood*—Rule nisi on leave reserved to set aside verdict and enter a nonsuit.

—18.—*Dunn v. Atkinson*—Rule refused for new trial on the ground of verdict being against evidence and misdirection.

—19.—*Regina v. Law and another*—Rule nisi to set aside proceedings by *sci. fs.* against newspaper editors.

—19.—*Alexander v. Druce and others*—Rule nisi for new trial.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### RIGHTS OF ACTION.

#### ACCIDENTAL DEATH.

Action for, under *Lord Campbell's Act*.—*A.*, being possessed of land abutting on a public footway, in the course of building a house on such land, excavated an area, which,

by the negligence of his work-people, was left unfenced, so that *B.*, who was lawfully passing along the way, the night being dark, without any negligence or default of her own, fell into the area and was killed: Held, that *A.* was liable under the 9 & 10 Vict. c. 93, to an action

by the husband, as administrator, for the benefit of himself and B.'s infant children.

The declaration alleged, that the defendant was possessed of a messuage, with the appurtenances, near to a common and public footway, and that, in front of and before the said messuage, and parcel of the appurtenances thereof, and close to, and by the side of, the said footway, and abutting upon, and opening into, the same, there then was a large hole, vault, or area, which hole, vault, or area the defendant, by reason of the possession of the said messuage, *with the appurtenances*, before and at the time when, &c., ought to have so sufficiently guarded and fenced as to prevent injury to persons lawfully passing in and along the said footway: *Held*, that the duty of the defendant to fence the area was properly alleged.

*Held*, also, that the Judge at the trial was justified in amending the declaration, by adding the words in italics.

In such a case, the declaration need not negative the existence of any relations entitled to compensation, other than those on whose behalf the action purports to be brought. *Barnes v. Ward*, 9 C. B. 392.

#### ADMINISTRATOR.

*Application of deceased's effects by stranger in payment of debts and funeral expenses, recoverable.*—Where money belonging to an intestate at the time of his death, or due to him and paid in after his death, or proceeding from the sale of his effects after his death, has, before grant of administration, been applied by a stranger to the payment of intestate's debts and funeral expenses, the administrator may recover it from such stranger as money had and received to his use as administrator; the letters of administration relating back, for that purpose, to the death of the intestate. *Welchman v. Sturgis*, 13 Q. B. 552.

Case cited in the judgment: *Fyson v. Chambers*, 9 M. & W. 460.

#### BUILDING ACT.

*Rewards to persons bringing engines to a fire.*—Under the Metropolitan Buildings Act, 14 Geo. 3, c. 78, ss. 76, 77, a magistrate has jurisdiction to fix the amount of reward to be paid to the keepers of engines brought to extinguish fires, and order it to be paid, although the parish officers do not originate any proceeding before him for that purpose. *Regina v. Combe*, 13 Q. B. 179.

#### BUILDING CONTRACT.

*Time of performance.*—*Provisions as to extra time for extra work and liquidated deductions for delay.*—Declaration in debt stated a building contract under seal, by which plaintiff covenanted to complete buildings by October 23rd, and defendant to pay him 418*l.* on the completion, and it was further covenanted that, if defendant should order any extra work, he should pay plaintiff its value, or, if he ordered a diminution or omission, plaintiff should allow the value out of the 418*l.* Also, that if, the buildings should not be finished on the 23rd October, plaintiff should pay the penalty

of 1*l.* per day for every subsequent day employed, as liquidated damages. Provided that, if defendant should require any additional work, plaintiff should be allowed so much extra time beyond 23rd October as might be necessary for completing the same. The plaintiff averred, that defendant ordered extra work, which required 31 days of additional time, and the value of which was 84*l.*; and that the contract would have been fulfilled by October 23rd, but for such orders. And he demanded the 418*l.*, minus a sum for diminutions, and 84*l.* for the extra work.

Defendant pleaded, as to 22*l.*, parcel of the debt in the declaration mentioned, that the extra time necessary for completing the additional work was nine days only, but that the plaintiff had exceeded the time ending on 23rd of October by 31 days, whereby he became liable to pay defendant 22*l.* according to the deed; which 22*l.* defendant offered to set-off.

*Held*, on general demurrer, that the clause for payment of 1*l.* per day applied to the covenant for extra time in respect of extra work, as well as to the clause which fixed a day for completing the contract as originally defined; and that defendant might deduct, in the form of set-off, 1*l.* per day for the number of days by which plaintiff had exceeded the necessary time for completing the extra work.

Also, on special demurrer, that the set-off was not bad because pleaded to the 418*l.*, and the 84*l.*, as constituting one debt. *Leyce v. Harlock*, 12 Q. B. 1015.

#### CARRIERS.

*Contract and duty.*—*Memorandum limiting their liability.*—Case. The declaration alleged that defendants were proprietors of a railway and of carriages for the conveyance of passengers, cattle, goods, &c., for reward; that plaintiff delivered to them, and they received from him, a horse of plaintiff to be "safely and securely" carried by them upon their carriages, and to be safely and securely delivered to plaintiff, at a place mentioned, for reward. That thereupon it was their duty "safely and securely" to convey and deliver the horse as aforesaid; yet that defendants did not use due care about its conveyance, but so negligently conducted themselves therein, that, by reason of the defective state of the carriage in which the horse was conveyed, it was killed. Plea, denying that the horse was delivered and received "to be safely and securely" carried as alleged. Issue thereon.

It appeared at the trial that the plaintiff had pointed out a defect in one of the partitions of a horse-box shown to him for the reception of his horse; that a servant of the defendants then endeavoured to secure the partition, and assured the plaintiff that he had done so; that the horse was carried in that box; and that the horse's death was occasioned during the journey by the insecurity of the partition. A receipt was given to plaintiff for the amount paid for conveyance of the horse, at the foot of which receipt was written:—"N. B. This ticket is issued subject to the owner's under-

taking all risks of conveyance whatsoever, as the company will not be responsible for any injury or damage (however caused) occurring to horses or carriages, while travelling, or in loading or unloading : " *Held*

That the terms of the memorandum formed part of the contract for the conveyance of the horse, and that they disproved the averment in the declaration that the defendants received the horse "to be safely and securely" carried.

*Quere*, whether, notwithstanding the terms of the memorandum, the plaintiff might not have alleged that it was the duty of the defendants to provide a sufficient carriage, and have charged them with the damage arising from a breach of that duty. *Shaw v. York and North Midland Railway Company*, 13 Q. B. 347.

#### CHATTEL.

*Verbal gift.*—When insufficient to pass property.—A mere verbal gift of a chattel to a person in whose possession it is, does not pass any property to the donee. *Shower v. Pilch*, 4 Exch. R. 478.

#### CONTRACT.

*Construction.*—On the 18th of February, the plaintiff wrote to the defendant offering to supply him with linseed cake at 10*l.* 15*s.* per ton. On the 19th, the defendant replied,—"I can take five tons at 10*l.* 10*s.*, but it must be put on board *directly*." And on the 22nd the plaintiff again wrote,—"I shall ship you five tons beat cakes *to-morrow*." *Held*, that this correspondence did not prove a contract on the part of the defendant to accept cake "to be delivered within a *reasonable time*." *Duncan v. Topham*, 8 C. B. 225.

#### COPYRIGHT.

1. *Foreigner.*—A foreigner, though resident abroad, may have copyright in this country, if the first publication is in this country. *Boosey v. Davidson*, 13 Q. B. 257.

Case cited in the judgment: *Cocks v. Purday*, 5 C. B. 860.

2. *Musical composition.*—*Piratical representation.*—No one can be considered as an offender against the provisions of the Dramatic Copyright Act, 3 & 4 W. 4, c. 15 (extended to musical compositions by the 4 & 5 Vict. c. 45, s. 20), so as to be liable to an action at the suit of the author or proprietor, unless he, by himself, or his agent, actually takes part in the representation which is a violation of the copyright.

Therefore, one who merely lets a room to the offender is not liable, even though he supplies the benches and lights, or sells a ticket of admission,—himself deriving no other profit than that arising from the letting of the room. *Russell v. Briant*, 8 C. B. 836.

#### DILAPIDATIONS.

*Liability of perpetual curate.*—A perpetual curate is liable to an action on the case, at the suit of his successor, for dilapidations. *Mason v. Lambert*, 12 Q. B. 795.

Cases cited in the judgment: *Sollers v. Lawrence*, Willes, 421; *Jones v. Hill*, 3 Lev. 268; *Wise*

*v. Metcalf*, 10 B. C. 307; *Radcliffe v. D'Oyly*, 2 T. R. 630; *Duke of Portland v. Bingham*, 1 Hagg. Cons. Rep. 157, 163; *Browne v. Ramsden*, 8 Taunt. 559; *Pawley v. Wiseman*, 3 Keble, 614.

#### DISMISSING CLERK.

*Justification.*—*Measure of damages.*—A. was engaged by B., as clerk, under a contract of hiring for two years, to conduct the business of a shipping agent at Southampton. In the course of such employ, it was the duty of A. to pay freight, dock dues, &c., to meet which B. remitted the necessary funds. A. wrote to B. for a remittance of 140*l.*, enclosing an account of the purposes for which it was required,—one of them being the payment of 30*l.* for salary due to himself. Ten days afterwards, B. sent A. 100*l.* enclosed in a letter, directing him to apply the money for "business purposes." A. having appropriated 30*l.* of the money in satisfaction of his salary, B. discharged him.

In assumpsit by A. against B. for breach of the contract of hiring, B. pleaded a plea justifying the discharge of A., on the ground of his having wrongfully and improperly misappropriated the money remitted, and wrongfully and improperly disobeyed B.'s orders to apply the money to "business purposes." The Judge left it to the jury to say whether the plaintiff had been guilty of any wrongful and improper misappropriation of the moneys intrusted to him by the defendant, or of any wrongful or improper disobedience of orders: *Held*, that this was a proper direction; and that the Judge was not bound to tell the jury that it was not necessary, to justify the dismissal of the plaintiff, that he should have been guilty of any moral delinquency.

*Held*, also, that, in awarding a sum equal to 12 months' salary, the plaintiff having been discharged after about one quarter's service, the jury had not given excessive damages. *Smith v. Thompson*, 8 C. B. 44.

#### EXECUTOR'S LIABILITY.

*Order of payment.*—*Contingent debts.*—In an action by executrix of assignor of a lease against executrix of assignee, upon a covenant by assignee to perform the covenant in the lease, and indemnifying assignor for the breach of any of them, defendant pleaded *plene administravit*, and at the trial, proved that the entire assets, including the consideration-money for a sale by him of the lease in question, had, before the breach of covenant complained of, been applied to the payment of simple contract debts.

*Held*, a sufficient defence; for that the executor was not bound to retain the proceeds of such sale for the purpose of indemnifying against any future breach of covenant. Although some of the breaches in question were by non-payment of rent. *Collins v. Crouch*, 13 Q. B. 542.

Case cited in the judgment: *Read v. Blunt*, 5 Sim. 567.

#### FACTOR.

*Lien.*—A factor can only claim a lien for his general balance, upon goods which came to his hands as factor.

*A. and Co.*, who carried on business at Hull, as merchants, factors, ship and insurance brokers, and general agents, had had various dealings, as factors, with *B. and Co.* of London. Whilst these dealings were going on between them, *B. and Co.* wrote to *A. and Co.*, requesting them to get a policy of insurance effected for them on the ship *Exporter*, for a voyage from the Downs to South America, and thence to the West Indies. *A. and Co.* procured the insurance to be effected, and *B. and Co.* remitted them the premiums,—the policy remaining in the hands of *A. and Co.*: *Held*, that *A. and Co.* were not entitled to hold the policy as a lien for the general balance due to them, as factors, from *B. and Co.* *Dixon v. Stansfield*, 10 C. B. 398.

#### FRAUDS, STATUTE OF.

*Acceptance of goods.*—*W.*, living at Hereford, ordered goods (at a price above 10*l.*) of *A.*, living at Bristol, and directed that they should be sent by the Hereford sloop to Hereford. They were sent accordingly; and a letter of advice was also sent to *W.*, with an invoice, stating the credit to be three months. On their arrival at Hereford, they were placed in the warehouse of the owner of the sloop, where *W.* saw them; and he then said to the warehousemen that he would not take them: but he made no communication to *A.* till the end of five months, when he repudiated the goods. In an action by *A.* against *W.* for the price, *Held*:

That the Judge ought not to have told the jury that there was no acceptance and actual receipt under the Statute of Frauds, 29 C. 2, c. 3, s. 17, but should have left them to find, upon these facts, whether or not there had been such acceptance and actual receipt. *Bushe v. Wheeler*, 15 Q. B. 442, n.

Case cited in the judgment: *Maberley v. Sheppard*, 10 Bing. 101.

#### HUSBAND AND WIFE.

*Funeral expenses.*—The husband is liable for the necessary expense of the decent interment of a wife, from whom he has been separated,—whether the party incurring such expense is an undertaker or a mere volunteer. *Ambrose v. Kerrison*, 10 C. B. 776.

Case cited in the judgment: *Jenkins v. Tucker*, 1 H. Blac. 91.

#### INNKEEPER'S LIEN.

*On guest's carriage.*—An innkeeper has a lien on a carriage, brought to the inn by a guest, for its standing room, though the carriage does not belong to the guest himself. *Turrill v. Crawley*, 13 Q. B. 197.

Cases cited in the judgment: *Robinson v. Walter*, 3 Bulstr. 269; 1 Roll. Rep. 449, n.; *Poph. 127*; *Johnson v. Hill*, 3 Stark. N. P. C. 172.

#### INTERPLEADER ACT.

*When not available.*—The defendants, who were wharfingers, had certain goods deposited at their wharf by *A. and Co.*, who transferred them to *B.*, by order, transferred them to plaintiff, at the same time acquainting the defendants with that fact. The defendants there-

upon placed the goods to the plaintiff's account in their books, and informed him of their having done so. *A. and Co.* and other parties subsequently laid claim to the goods, on the ground that the transfer to the plaintiff was fraudulent: *Held*, that the defendants were not entitled to the benefit of the Interpleader Act. *Horton v. Earl of Devon*, 4 Exch. R. 497.

#### LIMITATIONS, STATUTE OF.

*Acknowledgment to take case out of statute.*—*Attorney.*—To an action by the executor of an attorney, for his bill of costs, the defendant pleaded the Statute of Limitations and a set-off: to which latter plea the plaintiff replied the Statute of Limitations. The testator had transacted the law business of the defendant, and had received his tithes and rents. A letter written to the testator by the steward of the defendant, by his desire, stated that the defendant wished to have the testator's account, for the purpose of settling it. Another letter in Welsh, stated that the defendant intended to borrow money on his estates, and that the writer would come to the testator's house for the deeds, and if any account required looking over, the writer and testator might do that at the same time. With reference to the last-mentioned letter, the testator wrote to the defendant as follows:—"I have received a (Welsh) letter from your agent, and, as far as I am able to understand it, he requests to have the abstract of title, and my bill against you and account, as you are about to receive a sum of money to pay off the mortgages on your estates. I should be glad to hear from you as I am no Welsh scholar myself, precisely what is wanted." In answer, the defendant wrote—"Being one of those people who think short accounts make long friends, I directed my agent last year to apply to you for your bill, in order that we might settle the tithe accounts. What he applied to you in Welsh the other day was for my tithe-deeds." The defendant, for the purpose of taking his set-off out of the Statute, put in evidence an account furnished by the testator to the defendant, in obedience to a rule of Court; and he also put in evidence an affidavit, made and signed by the testator on the occasion of his furnishing such account. The account contained items to the credit of the defendant, for tithes and rents received by the testator for the defendant; and it also contained items to the credit of the testator, for cash paid to the defendant and for work done; and the account claimed a balance as due to the testator. The affidavit, in like manner, claimed a balance as due to the testator on the same account: *Held*, that the letters were not sufficient to take the plaintiff's claim, nor the account and affidavit sufficient to take the defendant's set-off, out of the Statute of Limitations. *Williams v. Griffith*, 3 Exch. R. 335.

Cases cited in the judgment: *Lechmere v. Fletcher*, 1 C. & M. 623; *Bird v. Gammon*, 3 Bing. N. C. 883; *Waller v. Lacy*, 1 M. & G. 54; 1 Scott, N. R. 186; *Gardner v. McMahon*, 3 Q. B. 561.

[To be continued.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, APRIL 30, 1853.  
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## DEBATES ON THE BUDGET.

### REDUCTION OF THE CERTIFICATE DUTY.

THE progress of legislation in the lower House of Parliament has been, and is likely for some time longer to be stayed by the debates arising upon the Budget. Mr. Gladstone's propositions involve considerations of such extent and importance, and affecting so many classes of the community, that it cannot be matter of surprise if the whole scheme should be approved of by those who condemn many of the details, and if some specific portions of the plan should be commended by many who regard its general features with disappointment, if not with dismay. Limiting our view to the operation of the Government measure upon those professional interests with which we are best acquainted, we continue to think that the prospect of relief held out to those who justly complain of the pressure of unequal burthens, is wholly inadequate, and that the concession made to claims which could no longer be safely resisted is marked by a niggardly spirit. Had the Chancellor of the Exchequer proposed to abolish the Certificate Duty prospectively, retaining half of the tax during the current year, it might possibly have disarmed opposition; but the objections to the principle of the tax remain untouched and undiminished by the reduction which is contemplated, and which is too trifling in amount to afford any sensible relief to those whose professional incomes, it is now admitted, have been materially affected by the restricted action of the law produced by legislative changes.<sup>1</sup>

<sup>1</sup> In another Article will be found the terms of the Chancellor of the Exchequer's proposed resolutions, in respect of the Articles of Clerkship, and Annual Certificate Duties, respectively.

It will have been observed that the Chancellor of the Exchequer proposes a reduction of existing taxes to the enormous amount of Five Millions and upwards. The Profession ask only, that in this vast re-arrangement of our fiscal system, one of the three taxes imposed on them may be included. In considering which of the three taxes should be first repealed, it is important to bear in mind the dates of their first imposition and their progressive increase. The duty on Certificates

In 1785 in Town was	£5,	Country	£3.
1804   "   "   "	10   "   "		6.
1815   "   "   "	12   "   "		8.

#### On Articles of Clerkship

In 1794 . . . .	£100
1804 . . . .	110
1815 . . . .	120

#### On Admissions

In 1804 . . . .	£20
1815 . . . .	25

It is now expressly acknowledged by the Finance Minister that the attorneys should not be subjected to this triple taxation; and the question is, which of the three should first be repealed?

The reduction of the duty on Articles of Clerkship, it is palpable, will not relieve those who are in actual practice,—nor those who have been admitted but are not in practice,—nor those who are now under Articles of Clerkship. Surely justice requires that relief should be so given as to place the parties on an equal footing. It cannot be right that, up to a certain day, the present attorneys and articulated clerks should have been compelled to pay the large sum of 120*l.*, and that to-morrow any number of persons may enter the Profession for a sum one-third less. The present practitioners have purchased their standing of the Government, and ought not



to be displaced without a just equivalent, either by postponing the reduction to a sufficiently distant day, or by returning a portion of the duty.

It may be said, that the attorneys who have been several years in practice have had the advantage of a due return for their outlay. This may be the case with many, but is not so with all; and we must especially take into consideration the claims of the present articulated clerks, who have all paid the duty. It appears that upwards of 500 are articulated every year, and consequently there are 2,500 now serving their clerkship. Another class consists of those who have completed their articles, but have not been examined. Others have been examined and admitted, but have not commenced practice. Now none of these have derived any advantage from the advance of the 120*l*. The Government have had their money for different periods of time—from a few days ago to the extent of five years. Are these several classes, who have paid upwards of 300,000*l*., to have no relief?

We happen to know that the articulated clerks and those who are waiting for admission, equally with the attorneys in actual practice, desire that the duty on the Annual Certificates should be totally repealed, as a relief to the present and all future practitioners; and if Parliament should hereafter deem it right to reduce or repeal the duty on Articles of Clerkship, that the money should be applied towards an improved system of education before entering the Profession.

Besides, the Chancellor of the Exchequer has lost sight of the difference in amount between England and Ireland,—where, in order to be admitted in the Superior Courts, it is both in town and country 120*l*.—and its amount in Scotland, where it is only 60*l*. in the Superior and 30*l*. in the Local Courts. Moreover, in England, the attorneys in the County Palatine Courts pay only 60*l*. These differences must of course be adjusted.

We understand that the Government are not disposed at present to reduce the taxes on the Profession more than 50,000*l*., and yet, after all, the relief which their Budget will afford to the community in general, there will be a surplus of nearly half-a-million. And if the proposed tax on the succession to real property be carried, including settlements, both of real and personal property, there is good reason to believe that in lieu of *two* there will be *four* millions of revenue derived from that source; and, therefore, Parliament can be in no difficulty

in doing an act of entire justice, instead of remitting only a small instalment.

We are aware that there are a few instances, both in town and country, of solicitors of eminence, who look coldly on the measures now in progress for repealing the tax. They do not feel the amount in their large expenditure, or they erroneously fancy that it tends to keep the Profession respectable. We have repeatedly shown that this latter is a mistaken notion.<sup>2</sup> We hear also from some, that the Financial Plan being on the whole satisfactory, they are reluctant to oppose any part of it, and recommend that the instalment be accepted, with an intimation, that we claim to come again in the next Session for entire relief. Now the Chancellor of the Exchequer estimates the total Income Tax paid by professions to be 250,000*l*.. Amongst those professions the attorneys alone are subjected, in addition to their share of the tax, to an impost of 118,000*l*., levied without reference to their income. In fact, they not only pay three taxes, not payable by other professions, but are subject to a three-fold amount of Income Tax.

It has been said, that if the Tax on Attorneys be repealed, so must the licences of brewers, distillers, &c.; but the latter are not personal or poll taxes, but connected with the Excise, and regulated by the extent of the trade, with the power (which is fully exercised) of transferring the burthen to the consumers, and doubtless with some profit superadded; whilst the attorneys are bound by rigid rules in the amount of their charge, and cannot increase them because they are unjustly taxed.

It appears that the Council of the Incorporated Law Society, who have the charge of the Bill by the common consent and request of the attorneys and solicitors generally, have had several interviews with the Noble Lord the Member for Middlesex, and other Members of Parliament favourable to the total remission of the duty; and a deputation from the Society, consisting of Mr. Kinderley, the Vice-President, with Mr. Barnes, Mr. Cookson, and Mr. Leman, members of the Council, and Mr. Maugham, the Secretary,—headed by Lord R. Grosvenor, Sir William Verney, Bart., and Mr. Fitzgerald, Q. C.,—attended the Chancellor of the Exchequer on Saturday last. From what passed at this interview, and from information otherwise obtained, it has been deemed expedient to postpone the second reading of the Bill from Wednesday, the

<sup>2</sup> See page 411, *ante*.

27th inst., to a future day, in order to take the sense of the House on the question of the total repeal of the tax, when the Chancellor of the Exchequer proposes his resolutions on the Stamp Duties.

This course is considered to be most consonant with Parliamentary practice, and it will have this advantage, that, if a majority for the total repeal of the tax shall be obtained, upon the resolutions of the Chancellor of the Exchequer, it may be anticipated that the question will be thereby finally settled; whereas, if the second reading of Lord Robert Grosvenor's Bill were carried, it would still, in all probability, be opposed by the Government on every subsequent stage.

In the present position of the question, the members of the Profession should use their utmost endeavours, collectively and individually, to influence their representatives in Parliament to vote for the total repeal of this most unjust and oppressive tax; and they should individually write to all the members with whom they may be personally acquainted.

It seems evident from what has been already achieved in three several Sessions of Parliament—the majority in favour of the repeal advancing from 19 to 30 in former Sessions and in the present to 52,—that if the attorneys and solicitors throughout the three kingdoms will again exert their influence—(why should they not redouble it)—there can be no doubt they will be successful.

#### PROPOSED ALTERATION IN THE STAMP DUTIES.

THE sixth head of the Chancellor of the Exchequer's Budget comprises the proposed reductions on the Articles of Clerkship and Annual Certificates of Attorneys, Receipt Stamps, &c. They are as follow:—

##### No. I.—Stamps.

That from and after the 5th of July, 1853, in lieu of the stamp duties now payable upon or in respect of the several instruments, matters, and things hereinafter described, there shall be paid the several stamp duties hereinafter specified (that is to say):—

Upon every indenture, or other instrument or writing of apprenticeship or clerkship (except articles of clerkship to attorneys and others, in order to admission in any Court, or any office in any Court)—

Where no sum of money or value shall be paid, given, assigned, conveyed, or secured to or for the use or benefit of the master or mistress, the duty of . . . 0 2 6

And upon or in respect of any assignment or

transfer of any such indenture, instrument, or writing as aforesaid, where there shall be no sum of money or value moving to any new master or mistress, the duty of 0 2 6

Upon articles of clerkship, or any contract whereby any person shall first become bound to serve as a clerk in order to his admission as an attorney or solicitor in any of her Majesty's Courts at Westminster, or in Ireland, or any other Court of Record in England holding pleas where the debt or damage amounts to 40s.; or in order to his admission as a proctor in the High Court of Admiralty in England, or the Court of Admiralty in Ireland, or in any of the Ecclesiastical Courts in Doctors' Commons or in Ireland; or in order to his admission as a writer to the Signet, or as a solicitor, agent, or attorney in any of the Courts of Session, Justiciary, Exchequer, and Commission of Tiends in Scotland, the duty of . 80 0 0

Upon or in respect of any certificate to be taken out yearly by every person admitted as an attorney, solicitor, or proctor in any Court in England or Ireland, or as a writer to the Signet or as a solicitor, agent, attorney, or procurator in any Court in Scotland, and by every person admitted or enrolled as a notary public in England, Scotland, or Ireland—

If he shall reside within the city of London, or city of Westminster, or within the limits of the twopenny post in England, or within the city or shire of Edinburgh, or in the city of Dublin, or within three miles thereof: If he shall have been admitted for the space of three years or upwards . . . 9 0 0

Or if he shall not have been admitted so long . . . 4 10 0

If he shall reside elsewhere and if he shall have been admitted for the space of three years or upwards . . . 6 0 0

Or if he shall not have been admitted so long . . . 3 0 0

Upon any policy of assurance or insurance, or other instrument by whatever name the same shall be called, whereby any insurance shall be made upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives—

Where the sum insured shall not exceed 50*l*. . . . . 0 0 6

And where the same shall exceed 50*l*. and shall not exceed 500*l*., then for every 50*l*. 0 0 6

And for any fractional part of 50*l*. over and above the first, or any multiple of 50*l*., the further duty of . . . 0 0 6

And where the same shall exceed 500*l*. and shall not exceed 1,000*l*., then for every 100*l*. . . . . 0 1 0

And where the same shall exceed 1,000*l*., then for every 1,000*l*. . . . . 0 10 0

And for every fractional part of 1,000*l*. over and above the first, or any multiple of 1,000*l*., the further duty of . . . 0 10 0

Upon any receipt or discharge given for or upon the payment of money, amounting to 2*l*. or upwards . . . . . 0 0 1

For or in respect of any advertisement contained in or published with any gazette, or other newspaper, or any other periodical paper, or in or with any pamphlet or literary work

0 0 6

Upon any draft or order for the payment of any sum of money to the bearer on demand, and drawn upon any banker, or any person acting as a banker, who shall transact the business of a banker at any place where such draft or order shall be payable, such place being distant 15 miles or more from the place where such draft or order shall be issued, provided such draft or order shall bear date on or before the day on which the same shall be issued, and provided the same do not direct the payment to be made by bills or promissory notes, the duty of . . . . . 0 0 1

#### No. 2.—Newspaper Supplements.

That so much of any Act as imposes any stamp duty upon any sheet or piece of paper containing wholly advertisements, and which shall be published with, and as a supplement to, any newspaper chargeable with stamp duty, shall be repealed.

#### No. 3.—Legacy Duty.

That the stamp duties payable by law upon, or for, or in respect of legacies, shall be granted and made payable upon, and for every succession to, the beneficial enjoyment of any real or personal estate, or to the receipt of any portion or additional portion of the income or profits thereof that may take place upon, or in consequence of the death of, any person, under whatever title, whether existing or future, such succession may be derived.

### CITY SMALL DEBTS' ACT.

#### VERDICT BETWEEN 20*l.* AND 50*l.*

THE inconsistencies of recent legislation are strikingly illustrated by a case, a short note of which appeared in our last publication.<sup>1</sup> A plaintiff, not residing in the city of London, sued a defendant who did reside in the city upon a bill of exchange for 28*l.*, in the Court of Common Pleas, and obtained a verdict, and the Court of Common Pleas has decided, that under the City Small Debts Act (14 & 15 Vict. c. lxxvii.), which is a local Act, the defendant is entitled to enter a suggestion to deprive the plaintiff of costs.

As most of our readers are aware, under the general County Courts' Act. (9 & 10 Vict. c. 95, s. 129), in actions brought in the Superior Courts founded on contract, where a plaint might be entered in the County Court, if the plaintiff has a verdict for less than twenty pounds the plaintiff has no costs, unless the Judge certifies that

the action was fit to be brought in the Superior Court; and by the County Court Amendment Act (13 & 14 Vict. c. 61, s. 11), it is provided that plaintiffs recovering a sum not exceeding 20*l.* in the Superior Courts which may be recovered in the County Courts, are not to have costs, and that it shall not be necessary to enter a suggestion to deprive the plaintiff of costs. The person who framed the City Small Debts' Act, apparently resolved to embody both those clauses, but in copying the 129th section of the Act 9 & 10 Vict. c. 95, he wilfully or inadvertently—we know not which—substituted 50*l.* for 20*l.*, and the result is, that in every case in which the defendant “dwells or resides or carries on business or has employment in the city of London or the liberties thereof, at the time of action brought, or six months next before, or if the action arise either wholly or partly within the city,” and where the verdict is under 50*l.*, the plaintiff may be deprived of costs. As the Judges of the Court of Common Pleas truly observed, they were bound to take the Act as they found it, they had no means of inquiring into the meaning of the Legislature, and could not even suggest why a rule should prevail in the city of London differing from that established in every other part of the kingdom. There were two sections in the City Small Debts' Act apparently conflicting, but which at the same moment obtained the Royal Assent.<sup>2</sup> It was impossible to say one was repealed by the other. Applying to the two sections the ordinary rules of construction, the consequence was, that when the verdict was under 50*l.* the plaintiff lost his costs, if a suggestion was entered; and if the verdict was under 20*l.*, the plaintiff lost his costs without any suggestion being entered.

The practical effect of this decision is, to create another anomaly, establishing a rule with respect to parties within the jurisdiction of the City Small Debts Court, differing from that which prevails in every other portion of the kingdom. In every case in which a sum is sought to be recovered above 20*l.*, but which may be less than 50*l.*, wherever the plaintiff resides, it will be necessary to inquire, in the first instance, if the defendant is within the jurisdiction of the City Small Debts' Court, and if the defendant—or should there be several, one of the defendants—has dwelt, carried on busi-

<sup>1</sup> *Castrick v. Page*, 45 Leg. Obs. 504.

<sup>2</sup> See the sections referred to, *ante*, page 504, s. 2.

ness, or had any employment in the city of London at any time within six months before action brought. In any of these events, the plaintiff suing in the Superior Courts is liable to be deprived of costs, unless the Judge at Nisi Prius certifies! The judicial decision to which we have referred appears to have proceeded upon principles not to be impugned: the legislation upon which it is founded is open to many and grave objections.

## LAW OF ATTORNEYS AND SOLICITORS.

### SUPPOSED DISABILITY OF SOLICITOR TO ACCEPT RETAINER.

In a suit by an infant next of kin for the administration of the estate of an intestate, a motion was made on behalf of the widow and administratrix and her second husband, to restrain Mr. Bashan from acting as solicitor to the next friend of the infant plaintiffs, on the ground that he had acted previously as solicitor to the administratrix.

In support of the motion, *Davies v. Clough*, 8 Sim. 2, was cited, and it was contended that the administratrix had a right to have her confidential communications with her solicitor protected. For the respondents, the case of *Parratt v. Parratt*, 2 De G. & S. 259, was referred to.

The Vice-Chancellor said,—

“My opinion is, that the principle laid down in *Cholmondeley v. Clinton*, 19 Ves. 261, does not apply to this case. I think that there is no ground upon which the Court ought to interfere to prevent this gentleman from communicating to the next of kin what took place between him and the administratrix in the course of the administration of the estate. I consider this to be the right conclusion in the present instance, though assenting, as I do entirely, to *Lord Cholmondeley's case*.”

The motion was refused without costs. *Hutchinson v. Newark* 3 De G. & S. 727.

## QUESTIONS AT THE EXAMINATION.

*Easter Term, 1853.*

### I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. State some of the alterations by the Com-

mon Law Procedure Act as to writs of summons.

6. In case where personal service of a writ of summons cannot be effected, what step is the plaintiff's attorney to take to enable him to proceed?

7. In case of non-appearance to a writ specially indorsed, what steps are necessary to enable the plaintiff to sign judgment? and when may he issue execution?

8. How many days' notice of trial is required? and is there any difference between town and country causes?

9. What is the meaning of withdrawing a juror? and what is the effect of it?

10. How soon after trial may the successful party enter up judgment?

11. Is there any, and what, period within which a debt is recoverable?

12. Is a verbal promise sufficient to take a case out of the Statute of Limitations, or must the plaintiff be prepared with any further evidence?

13. How soon should an application to set aside proceedings for irregularity be made? and what act of the party applying debars him from relief?

14. In a case where a rule is obtained to show cause why proceedings should not be set aside for irregularity with costs, and the rule is discharged generally without an express direction as to costs, what becomes of them?

15. Is a party, taking out a summons before a Judge, entitled to an order on the return thereof, or must he take any further step?

16. Before what hour must services of pleadings, notices, summonses, &c., be made? and what is the consequence, if made after that hour?

17. In what two cases are rules for attachments absolute in the first instance?

18. If a witness do not attend upon his subpoena, can he be proceeded against? and if so, in what way?

19. At what time must a judgment be reviewed, and by what process?

### III. CONVEYANCING.

20. Suppose an estate limited by deed to A. for life with remainder to the heirs of his body; what estate does A. take?

21. Mention the principal parts of a conveyance in fee by a mortgagor and mortgagee to a purchaser.

22. Is there any and what difference between the covenants for a title on a mortgage and on a sale?

23. Tenant for life grants leases under a power. Are the rents apportionable at his death?

24. In case of a doubt as to the proper stamp to be put on a deed, what course would you recommend to be adopted for your client's security?

25. State the requisites for the due execution of a will, and are they the same both with regard to real and personal estate?

26. What effect has marriage upon a will?

27. A father by his will gives a legacy of

10,000*l.* to his son, the son dies in the father's lifetime leaving children; what becomes of the 10,000*l.*?

28. What provisions would you insert in a marriage settlement for the protection of a wife and children, where the intended husband is in a precarious trade?

29. What is a rent seck?

30. What different remedies has a mortgagee with a power of sale for the recovery of his mortgage money?

31. If a person dies unmarried and intestate leaving a mother, two brothers, and a sister surviving him: who become entitled to his real, and who to his personal estate?

32. In the same events if he leaves a father also surviving him, who becomes entitled to his real, and who to his personal estate?

33. In the same events if he leaves neither father nor mother, but a brother by the half blood, and two sisters by the whole blood: who become entitled to the real, and who to the personal estate?

34. If a married woman is entitled to money secured by bond, and the husband dies in her lifetime before the bond is paid off: who becomes entitled thereto?

#### IV. EQUITY AND PRACTICE OF THE COURTS.

35. What is meant by "Equity," as administered in our Courts, and how is it distinguished from Law?

36. Mention some of the principal heads of equitable jurisdiction.

37. What is the general course of proceeding, as now established, to obtain relief in a Court of Equity?

38. In instituting a suit on behalf of an infant or married woman, what authority must the solicitor take to use the name of a next friend, and at what stage of the suit is such authority to be adduced?

39. What time is allowed to a defendant to appear, after service of a bill of complaint?

40. What are the several liabilities to which a defendant, not appearing in time, becomes subject?

41. What is the mode of proceeding against a corporation failing to enter an appearance?

42. Within what time, after appearance, must a defendant plead, answer, or demur, and in case of default, what liabilities does he incur?

43. Has any improved effect been given by any, and what Statute, to decrees, or orders of a Court of Equity, and can they be enforced in the same, or any similar manner, as judgments at law?

44. May the plaintiff in any case move for a decree before the defendant's answer is filed, and what is the course of proceeding?

45. If access to her infant children be refused to a mother by the father or guardian, will the Court interfere to any and what extent, and if so under what authority?

46. Will a Court of Equity recognise any period of time as a limitation to a suit against a trustee who is charged with fraud in the execution of his trust?

47. What is the nature and effect of an in-

junction, and mention some of the cases in which the Court will grant that remedy?

48. Are there any and what cases in which Equity will relieve against the forfeiture of a lease by breach of covenant, and any, and what cases in which Equity will not relieve against such forfeiture?

49. If a contract be broken, what remedy is afforded by a Court of Equity, and in what respect does it differ from a proceeding at Law for breach of contract?

#### V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. State briefly the principle of the Bankrupt Laws, and the relief which they afford.

51. In what essential respect do they differ in principle from the Insolvent Laws and the relief given by the latter?

52. What are the three conditions required to constitute a bankrupt?

53. In what case may articles of merchandise be sold without subjecting the vendor to the Bankrupt Laws?

54. Enumerate the different Acts of Bankruptcy?

55. Can a trader make himself a bankrupt, and under what restriction?

59. What proceedings take place at the hearing of the petition for adjudication.

57. Within what time, whether in town or country, must the adjudication be obtained, and what consequences ensue from its not being obtained within due time?

58. How does the debt of a petitioning creditor differ from a debt provable under the adjudication?

59. What are contingent debts. Describe some of them.

60. Is a claim upon a charter-party for demurrage incurred after the bankruptcy, a contingent debt?

61. Are any and what contingent debts provable under the petition for adjudication?

62. Must any and what consent be obtained by assignees before commencing an action at Law, or suit in Equity, or before referring any claim to arbitration.

63. If a bankrupt be holder of leasehold premises which are not likely to be beneficial to the estate, what course must the landlord and assignees respectively take in regard to the property?

64. What are the principles of reputed ownership?

#### VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. State generally the jurisdiction of Courts of Quarter Sessions.

66. What appeal lies from all, or any, of the decisions or orders of the Quarter Sessions?

67. Can questions of Law be reserved at the Assizes or Quarter Sessions in Criminal Cases, for the opinion of any, and what, Judges of the Superior Courts?

68. How are such questions brought before the Judges, and when and where are they decided?

69. What are the powers of justices of the peace in Petty Sessions, and in what cases has a single magistrate jurisdiction?

70. What is the distinction between felonies and misdemeanours?

71. Where the accused, against whom a warrant has been issued in England, goes to Ireland or Scotland, what steps can be taken for his apprehension?

72. What defects will vitiate an indictment?

73. To whom should stolen property be described in the indictment as belonging,—the owner, or the person in whose possession it was at the time of the theft?

74. On an indictment for embezzlement, it appears by the evidence that the offence was larceny—is the prisoner entitled to an acquittal?

75. What variances, if any, between the record and the evidence may be amended at the trial?

76. Are there any, and what, recent enactments relating to the protection of apprentices and servants?

77. Can a criminal prosecution be carried on by the same person, concurrently with an action for a private injury?

78. What is a writ of mandamus? How may it be opposed, and how tried?

79. In what cases will a writ of prohibition issue, and from what Court?

## COUNTY COURT STATISTICS.

### TAXES ON JUSTICE.

*From a return to the House of Lords, printed on April 18 instant, it appears that,*

The total number of summonses which have been issued in the County Courts from their commencement in March, 1847, to the 31st December, 1851, for sums not exceeding 20*l.*, is . . . . . 2,160,394

And the total number issued for sums between 20*l.* and 50*l.*, is . . . . . 17,743

2,778,137

The aggregate amount of the sums for which such summonses were taken out, is £6,777,372

*The amount of each summons is, therefore, on the average, very nearly . . . . .* £3 8 9½

The aggregate amount of the fees charged to, and paid by the suitors in respect of, such summonses, is . . . . . £1,206,901

*The average amount of fees paid on each summons, is therefore . . . . .* £0 8 8½

*Or* £17 16*s.* 1¼*d.* per cent. <sup>1</sup>

It appears these fees are made up of—

1st. Judges' fees, out of which their salaries and travelling expenses have been paid, and the surplus carried to the general fund.

2nd. Clerks' fees, which are taken by the clerks for their own use, with the exception of 15 of the large Courts, the clerks of which are

paid by salaries out of the fees of such Courts and the surplus goes to the general fund.

3rd. High Bailiffs' fees, which are paid over by the clerks to them for their own use.

4th. General fund fees of 8*d.* in the pound on the amount for which summonses are issued, out of which the disbursements for rent of court-houses and offices, for books and stationery, and all other expenses incidental to the holding of the Courts are paid, and the travelling expenses of the Treasurers' and their clerks, as well as a yearly allowance of 150*l.* to each Treasurer for hire of clerk and rent of office, have been also defrayed out of this fund from the commencement of the Courts.

## INCORPORATED LAW SOCIETY.

SPECIAL REPORT OF THE COUNCIL.  
March 10, 1853.

[Concluded from p. 500, ante].

*The County Courts.*—The Council have continued to take a strong interest on behalf of their brethren, in the various changes which have taken place in this department of the administration of justice. Useful or necessary as such Courts are in the recovery of small debts, for which alone they were constituted, the Council have felt it to be their duty to oppose the incessant attempts to extend their jurisdiction to trials of important questions. And they have invariably resisted the attempts made by a small section of the Junior Bar to alter the Law and Practice, for the purpose of enabling them to act in these Courts, in the joint capacity of counsel and attorneys. They have opposed the alteration on several grounds:—

1st, Because the suitors would not be benefited by the change. 2nd, Because it would be more expensive. 3rd, Because it could not be legally carried into effect, without repealing several of the Statutes relating to the qualification, service, payment of duties on articles, admission, and annual certificate of attorneys, and inflicting a glaring injustice on that branch of the Profession.

They conceive that the present division of professional labour, between the advocate in Court and the attorney at his office, is highly convenient, if not essential, to the due administration of Justice. The Bar have exclusive audience in all the Superior Courts, and at the Quarter Sessions, where a sufficient number of the Bar is in attendance; but it is for the advantage of the public that in the Bankruptcy and County Courts, and before magistrates, it should not be compulsory on suitors, creditors, or complainants, to incur the expense of employing counsel. Such employment should be left to the choice of the client, or his attorney:—it being clearly the interest, as well as the duty of the latter, to employ counsel whenever the difficulty or importance of the case will justify such employment.

<sup>1</sup> The per centage of the fees is, of course, larger on the amounts recovered.

On this subject Lord St. Leonards, who assented to the last alteration in the County Courts' Act, which expressly prohibited the employment of barristers unless instructed by attorneys, stated:—

"That he gave his vote with great reluctance in favour of repealing the law; and he gave it upon the distinct statement, that attorneys had threatened the Bar that, if they took business in the County Courts they should not have business elsewhere." His lordship added, "I meant to leave it to the honour of the Bar to act as they had always acted, not intending to open the door at all, unless there were an absolute necessity for it, to the practice of barristers acting without the intervention of attorneys,—a practice in his view highly objectionable, and one which he should be the last person to countenance."

It will be recollected also, that Lords Truro and Campbell strongly upheld the policy of the restriction for the sake of the Bar itself;—the latter pointedly observing that, whilst the superintendence of the Judges and the Benchers might be sufficient in the Metropolis to prevent any degrading practice, their control, without the intervention of the Legislature, would be inoperative in distant and provincial Courts, and, therefore, his lordship maintained the expediency of the prohibitory enactment.

In addition to the repeal of the statutory restriction of employing counsel, except when instructed by an attorney, another alteration was proposed for the purpose of preventing one attorney from employing another as his agent or representative in the County Court, or instructing (as it was termed) an "Attorney Advocate." It is, perhaps, no small compliment to the learning and ability of this branch of the Profession, that the Legislature was called upon to prevent one attorney from giving instructions to another, instead of employing a barrister.

This alteration, which was made in the County Courts Bill of 1852, at the last stage of its progress (and without the usual notice) proposed that an attorney should be prohibited from appearing in the County Courts, "unless acting *generally* in the action for the party, and not being an attorney retained as an advocate by such first-mentioned attorney." The prohibition in this clause was considered by the Council, according to one construction of its terms, to be very inconvenient and prejudicial to the suitors, and entirely opposed to the spirit and intention of the Legislature in passing the County Courts' Act, which was intended to encourage economy as far as possible. It would appear to be intended by the alteration, that the suitor should submit to the inconvenience of a personal attendance at the Court, or incur the expense of employing a barrister, wherever the attorney, originally employed in the case, was prevented from personally attending the hearing, either from his residing at a distance from the County Court, or from any other cause. It is true that the

words of the altered clause applied only to the retainer of an attorney "as an advocate" by another attorney; but it was apprehended that, though called an advocate, the term would exclude a London agent or an attorney acting in any part of the country as agent on behalf of another attorney.

It was, therefore, most urgently submitted, that the clause should be restored to the state in which it passed the House of Commons; but the Council were unsuccessful in their endeavours in this respect, and the 15 & 16 Vict. c. 24, s. 10, contains the prohibition in question. On full consideration, however, of the enactment, the Council are of opinion that it will not prevent any attorney from appearing in any case before the County Courts, provided he has a retainer direct from the party requiring his services. The same attempt to exclude the agent of an attorney (or so called "attorney-advocate") is made in Lord St. Leonards' Bill of this Session to amend the Bankrupt Laws, which is now before the House of Lords, and the Council are directing their attention with a view to obtain the withdrawal of the clause.

A Committee of five of the Judges of the County Courts was appointed by the Lord Chancellor to frame a scale of costs in those Courts; and in September last, the Council were requested by the Committee of Judges to make any suggestions they might think proper with reference to the scale of costs in those Courts. A copy of the letter by which the members of the Society were invited to send communications, was placed up in the Hall, and the matter was fully considered by the Council and their Common Law Committee. The result was submitted for the consideration of the Judges, comprising a scale both of plaintiffs' and defendants' costs, to be allowed as well between attorney and client as between party and party; and they proposed that a deputation from the Council should attend the Judges on the subject, at any time they might please to appoint. A scale was subsequently settled, and is now under the consideration of the Judges of the Superior Courts.

*Taxes on the Administration of Justice.*—The Profession last Session had reason to congratulate their clients that the Legislature distinctly recognised and acted on the principle of paying a large part of the expense of administering justice in the Court of Chancery out of the Consolidated Fund. By the Sutors' Relief Act of 1852, the Fee Fund in Chancery was relieved from the salaries of the Judges to the amount of 26,000*l.* a year.

This was one step forward in the right direction. The Council had repeatedly petitioned Parliament on the subject, urging indeed that not only the Judges, but the principal officers of the Court, if not all of them, and the expenses of the Court, should be defrayed by the State.

But in the Bill just brought in by Lord St. Leonards "for the further Relief of the Suitors," whilst his lordship has proposed

some very beneficial changes, he has allowed a clause to be inserted giving power hereafter to the Lord Chancellor to order the payment of the Judges' salaries out of the Fee Fund instead of the Consolidated Fund. This appears to be in direct contravention of the declared views of Parliament, and application will be made to his lordship to withdraw the clause; otherwise it will become necessary to oppose it in all its stages.

*Administration of Oaths by Attorneys in London.*—The Council have suggested to the Judges, that commissions for taking oaths should be granted by the Judges to attorneys practising in different parts of London and its suburbs, urging that under the present practice commissions for taking affidavits in the several Superior Courts are issued to every attorney residing at the distance of 10 miles or upwards from London, under the authority of which affidavits could be sworn in any action or other proceeding before the nearest attorney, at any hour most convenient to the deponent; but that if he reside in London, or within 10 miles, he must either travel beyond 10 miles from London to a Commissioner, or must attend the Court, or one of the Judges at Chambers, within the limited hours of their sitting, or must pay a considerable extra fee for the attendance of one of the Judges' clerks away from the Judges' Chambers,—which latter accommodation can only be obtained in the case of illness or of inability of the party to leave his house.

It was therefore submitted that public convenience, and the saving of expense to the suitor in legal proceedings, would both be consulted, if attorneys carrying on business in different parts of London and its neighbourhood, were empowered to take affidavits in London, and to the distance of 10 miles therefrom.

It is understood that the Judges would have adopted this suggestion; but an objection has been raised at the Treasury, that the oath-fees received by the Judges' clerks will be lost to the Fund. This difficulty, it is expected, will soon be overcome.

It is observable also, that since the abolition of the office of Master in Chancery, a Bill was introduced by Lord St. Leonards, which passed the House of Lords and is now before the House of Commons, for the purpose of authorising the Lord Chancellor to appoint persons to administer Oaths in Chancery in London as well as in the country, and which will extend to the Channel Islands.

*Removal of the Courts from Westminster.*—The Council have renewed their exertions to effect this important improvement. In 1841, before a Committee of the House of Commons, of which Lord Truro was Chairman, they adduced the evidence of several Judges, Masters, Registrars, barristers and solicitors, in favour of the proposition; and in 1845, the inquiry was continued and further testimony brought forward, with estimates of the expense and the means by which it might be defrayed.

The time appears now to have arrived when the plan should be carried into effect. Instead of the two former Courts of Chancery there are now six, besides four sets of Chambers required for the Equity Judges. The site at Westminster is altogether inadequate for the present Courts, but would be invaluable in completing the Houses of Parliament. In these circumstances a petition under the Seal of the Society has been prepared and placed in the hands of Lord R. Grosvenor, who cordially supports the measure.

The inconvenience of the present site at Westminster is manifest,—distant as it is, not only from the district where both branches of the Profession and all the offices of the Courts are located, but from the centre of the Metropolis. The defective construction of the existing Courts, their insufficient number, and want of accommodation, as well for the Public as the Profession, are well known to all who are engaged in the administration of justice.

It is proposed that the new building should be placed near the Inns of Court and combine, under the same roof, accommodation, not only for all the Courts both of Law and Equity, but for the Masters, Record Clerks, and other officers, and particularly the business of the Equity Judges and the Chief Clerks.

The site suggested lies between the Temple and Lincoln's Inn,—having the Strand on the south, Carey Street on the north, Chancery Lane on the east, and Clement's Inn and New Inn on the west—situate on the borders of the Cities of London and Westminster. On the north side it would be traversed by the new street intended to be made from the City to the West End, on part of which is now constructing the State Record Office.

The petition of the Society points out the way and means for effecting this great public and professional improvement from the following funds:—

1st. The surplus interest accumulated in the Court of Chancery, to which the Suitors have no claim.

2nd. The accumulated Fees since 1833.

3rd. The surplus fees of the Common Law Courts paid into the Treasury since 1838.

4thly. The amount to be derived from the sale or letting of the numerous chambers now occupied by the officers of the several Courts.

5th. The value of the site of the present Courts at Westminster.

6th. The ground rents which may be obtained for such part of the site as will not be required for the Courts and offices, and which may be let for professional chambers.

*Examination and Admission of Attorneys.*—The mode of conducting the Examination hitherto adopted by the Examiners, has been to propose 15 Questions on the Principles and Practice of each of the following Branches of the Law; viz.,—1st, Common Law; 2nd, Conveyancing; 3rd, Equity; 4th, Bankruptcy; and 5th, Criminal Law and Proceedings before Magistrates.

The Examiners required that the candi-



dates for admission should satisfactorily answer a sufficient number of the Questions in Common Law and Equity, and also in one of the three other branches; thus making a satisfactory examination in Law and Equity indispensable, and leaving it optional with the candidates to answer in any one of the three other branches.

But looking to the great importance to the community, that attorneys and solicitors should be well acquainted with the Law of Real Property, and qualified to prepare and superintend the due execution of wills, deeds, and other instruments, the Examiners, with the sanction of the Judges, have determined in future to require the candidates to pass a satisfactory examination in the department of Conveyancing.

The Examiners will continue the practice of proposing questions in Bankruptcy and in Criminal Law and Proceedings before the Magistrates, in order that Candidates who may have given their attention to these subjects, may have the advantage of answering such questions, and have the correctness of their answers in those departments taken into consideration in summing up the merit of their general examination.

The new regulation will be carried into effect in and after Michaelmas Term next.

In addition to this amendment of the future examinations, the Council also suggested to the Judges some alterations in regard to Notices of Admission, Renewal of Certificates, and Re-Admissions.

1st. *As to Notices of Admission.*—The printed lists of each Term contain sometimes nearly double the number of applicants really to be examined, and this excess is occasioned by their giving notices for two successive Terms, in order that if they are prevented attending, or do not pass in the first Term, they may be entitled to come up the following one. It is now provided that a candidate, who has given notice for one Term, may, within one week after its expiration, give notice for the next Term.

2nd. *As to the renewal of Certificates.*—Where the Judge considers that the full Term's notice may be dispensed with, in consequence of an agreement for a partnership, or the decease of an attorney, to whose practice the applicant expects to succeed, or other sufficient cause, 10 days' notice of such application must be given to the Incorporated Law Society as the Registrar of Attorneys, in order that due inquiries may be made into the character and conduct of the applicant.

3rd. *As to Re-admission.*—On the suggestion of the Council, the same length of notice must be given as in the case of an original admission, that is, three days before the Term next preceding that in which the application will be made. The reason of this amendment is obvious; a party who has been struck off the Roll, and asks to be restored, should be subjected at least to the same investigation as on a first application.

The Rules of 1791, 1793, 1836, and 1846,

are rescinded, and the whole are incorporated in the New Rules of Hilary Term, 1853, of which a printed copy has been sent to each member of the Society.

With respect to the renewal of certificates under special circumstances, without giving the usual Term's notice, the Judges have already carried into effect the suggestion of the Council, by directing that summonses should be served on the Secretary of the Society, to afford an opportunity of showing cause against such applications; and several cases of this kind have been brought before the Council at their weekly meetings, and such inquiries instituted as appeared necessary in the discharge of the duty of the Society as Registrar of Attorneys.

The Council reserve for the Annual Report, to be made at the General Meeting in June, the details relating to the affairs of the Society, its Library, Lectures, and state of the Fund;—with the various Parliamentary proceedings that may in the meantime take place,—the usages of the Profession in conveyancing business,—cases of malpractice,—and other matters to which it may be necessary to call the attention of the Society.

The preceding statement is transmitted, not only to the members of the Society, but to other attorneys and solicitors, in order that they may be aware of the various parliamentary and judicial proceedings which relate to the duties and affect the interests of the Profession in general; and the Council of the Society invite the suggestions and co-operation of their brethren in general, in forwarding such further alterations in the Law and Practice as appear to be essential, equally for the benefit of the suitors, and the convenient discharge of the duties and the just remuneration of the Profession.

(Signed) JOHN COVERDALE, *President.*

R. MAUGHAM, *Secretary.*

## SELECTIONS FROM CORRESPONDENCE.

### REPEAL OF CERTIFICATE DUTY.

*To the Editor of the Legal Observer.*

SIR,—The appeal of the Attorneys on the subject of the repeal of the Annual Certificate Duty has at length been responded to by the Government, and a reduction from 12*l.* and 8*s.* to 9*l.* and 6*s.* has been proposed by the Chancellor of the Exchequer.

As this concession proves the justice of the claim, it is unreasonable to suppose that the Profession will be content with anything less than the abolition of the Tax. The alteration does not however rest here, for the Stamp on Articles of Clerkship is also proposed to be reduced from 120*l.* to 80*l.* This however confers no boon, but on the contrary is injurious to the Profession by tending to increase the number of Attorneys, and consequently to diminish their profits by extending

their number, so that probably a few years hence practitioners would be less able to pay the 9*l.* or 6*l.* than they are now the 12*l.* or 8*l.* This duplicity of dealing with a just complaint will, it is hoped, not be allowed to pass in silence upon the discussion of the Budget. What is wanted is the repeal of the Annual Tax, and nothing but the repeal. It is an insult to common sense to offer in lieu of it a future partial reduction of the duty on Articles as a benefit to those who have already paid it. Truly may it be said,—“We ask for bread, and he gives us a stone; for a fish and he gives us a serpent; for an egg and he offers a scorpion.”

J. E.

## ATTORNEYS TO BE ADMITTED.

*Trinity Term, 1853.*

*Queen's Bench.*

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

Allen, William, 4, Southampton-street; Morning-ton-crescent; and Derby	W. Williamson, Derby
Amery, Henry Dickinson, Eaton Lodge, Peck-ham; and Stourbridge	Rowland Price, Stourbridge
Appleton, Henry, 45, Curzon-street, May Fair; and Stokesley	J. P. Sowerby, Stokesley
Aston, John, 3, Ranelagh-grove, Pimlico; Great Marlborough-street; and Wem	H. J. Parker, Wem; C. G. Jones, Gray's-inn-square
Atkinson, Richard Matthew, 2, Guildford-street, Russell-sq.; and Northallerton	T. C. Atkinson, Northallerton
Aveline, Henry Thomas, Epsom	J. James, Wrington
Banks, Charles Edmund, 4, Henrietta-street, Cavendish-square; and Louth	H. Pye, Louth
Barker, Horace Isaac, 120, Jermyn-street; and Sandy	E. Argles, Biggleswade
Bathurst, Henry, 26, Devonshire-street, Queen's square; and Faversham	B. Bathurst, Faversham
Baugh, George, 11, Blomfield-ter., Pimlico; and Brosseley	G. Potts, Brosseley
Beck, Charles George Haden, 17, Garnault-place, Clerkenwell; and Worcester	E. Corles, Worcester
Berridge, Robert Bristow, 18, Ampton-st., Gray's-inn-road; and Bristol	S. Berridge, Leicester
Bishop, Mortimer Samuel, 6, North-place, Gray's-inn-road; Torrington-square; and Exeter	W. R. Bishop, Exeter
Blake, John Dyer, 19, Soley-terrace, Pentonville; and Langport	R. H. Blake, Langport
Booker, George, jun., Ampton-st.; 55, Frederick-street, Gray's-inn-road; and Allerton	Septimus Booker, Liverpool
Boote, Daniel, Manchester	J. B. Vickers, Manchester
Bradley, George, Castleford, near Leeds	C. Bulmer, Leeds
Branson, Charles Anthony, 8, Percy-circus; and Sheffield	T. Branson, Sheffield
Braund, Marwood Kelly, 15, Upper Park-street, Islington; and Exeter	E. H. Roberts, Exeter
Bryan, George, 16, Theberton Street, Gibson-sq.	J. W. J. Dawson, Bedford-square
Burch, Arthur, 5, Pilgrim-street, Ludgate-hill; and St. Thomas, Devonshire	W. Lambert, jun., Exeter; C. H. R. Rhodes, Chancery-lane
Burton, Francis, Babington-terrace, Nottingham	Hugh Bruce Campbell, Nottingham
Butler, Francis George, 62, Lincoln's-inn-fields; and St. Neot's, Huntingdon	Octavius Wilkinson, St. Neot's
Calthrop, Thomas Dounie, 4, Upper-park-place, Blackheath	J. S. Rymer, Whitehall-place
Carter, Thomas, 1, Swiss-cottage, St. Peter's-terr., Hammersmith; and Hull	Thomas Holden, jun., Hull
Cearns, Edward Paton, 13, Featherstone-bullds., Holborn; and Liverpool	J. Robinson, Liverpool; E. Banner, Liverpool
Chamberlain, James William, 36, University-st., Gower-street	J. H. Chamberlain, University-street
Clarke, Edmund John H. W., 55, Acton-st., Gray's-inn-road; Lower Calthorpe-st.; and Helston	T. Rogers, Helston
Clegg, Charles, Bradford	J. Clegg, Bradford, Yorkshire
Cobb, William Wise, 1, Soley-terrace, Amwell-st.; Gravesend; and Bredgar	C. F. Cobb, Moorgate-street
Collins, Arthur John, Norwich	George Arthur Dye, Norwich

**Clerks' Names and Residences.**

Cooke, John Thomas, 32, Claremont-sq.; Cloudestley-villa; Stonefield-street; Lower Calthorpe-street; and Tamworth . . . . .  
 Dempster, Joseph, Brighton . . . . .  
 Drake, Montague William Tyrwhitt, 47, Baker-st. . . . .  
 Earle, Henry Benjamin, B. A., 5, Mecklenburgh-street; Lincoln's-inn-fields; and Andover . . . . .  
 Elmhirst, James, Gainsborough, and Round-green, near Barnsley, Yorkshire . . . . .  
 Emanuel, Lewis, 10, South-street, Finsbury; and Addison-terrace . . . . .

**To whom Articled, Assigned, &c.**

J. Shaw, Tamworth . . . . .  
 A. W. Woods, Brighton . . . . .  
 H. Maltby, Bank-buildings . . . . .  
 H. Earle, Andover . . . . .  
 Joseph Guy, Gainsborough, Lincoln . . . . .  
 J. Hoskins, Portsmouth . . . . .

[To be continued.]

**DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

*From March 22nd, to April 22nd, 1853, both inclusive, with dates when gazetted.*

Blackmore, Hugh Haywood, and Philip Frederick James, 9, Staple Inn, Holborn, Attorneys and Solicitors. April 5.

Collinson, Robert, and Martin Richardson, Bridlington, Attorneys and Solicitors. Mar. 29.

Fairthorne, Thomas, and George Annesley, St. Albans, Attorneys and Solicitors. April 22.

Fisher, Edward, William Sherwin, and Thomas Burgh Dalby, Ashby-de-la-Zouch, Attorneys, Solicitors, and Conveyancers. April 8.

Hearn, John Henry, and Charles John Newby, Isle of Wight, Attorneys and Solicitors. April 8.

Heather, James, and Francis Horace Moger, 17, Paternoster Row, City, Attorneys and Solicitors. April 12.

Poole, Thomas Evered, and Frederick Ferdinand Armistead Steele, Frome Selwood, Attorneys and Solicitors. March 22.

**NOTES OF THE WEEK.**

**CERTIFICATE DUTY REPEAL BILL.**

FROM the proceedings in Parliament, it appears that on the order of the day for the second reading of the Bill for repealing the Attorneys' and Solicitors' Certificate Duty, on Wednesday last,

Lord R. Grosvenor said, that as the Chancellor of the Exchequer had announced his intention of dealing with this duty, he would postpone the second reading until the 1st of June, when, if the right hon. gentleman

should not have removed the duty altogether, he would certainly persevere with his Bill.

This determination is in accordance with the wishes of almost the whole of the Profession.

**ADMISSION OF SOLICITORS.**

THE Master of the Rolls has appointed Tuesday the 3rd May, at the Rolls Court, Westminster, at half-past Nine in the forenoon, for swearing Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Monday, the 2nd May.

**DEATH OF MASTER DAX.**

By the sudden death of Thomas Dax, Esq., the Senior Master of the Court of Exchequer, the office of one of the Masters in that Court has again become vacant. The appointment is in the gift of the Lord Chief Baron, who, it will be remembered, upon the last occasion of a vacancy, much to the advantage of the public, selected for the office an attorney of acknowledged ability and extensive experience. The salary of a Master of the Common Law Courts is fixed by Statute at 1,500*l.* per annum.

**NEW MEMBER OF PARLIAMENT.**

George Frederick Samuel Robinson, commonly called Viscount Goderick, for Huddersfield, in the room of William Rookes Crompton Stansfield, Esq., whose election had been declared void.

**RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.**

**Lord Chancellor.**

April 15, 16, 20, 23.—*Traill v. Bull*—Cur. ad. vult.

—23.—*Shrewsbury v. Shrewsbury*—Stand over.

—23.—*Clifford v. Turrill*—Motion refused, with costs.

—23.—*In re Brandeis' Patent*—Part heard.

**Lords Justices.**

*In re White.* April 22, 1853.

**LEASE OF LUNATIC'S ESTATE.—DETERMINABLE BY DEATH BEFORE EXPIRATION OF TERM.**

The Court refused to grant a lease under the 11 Geo. 4, and 1 Wm. 4, c. 65, s. 23, for 21 years, at a rack-rent, of property belonging to a lunatic, where the remainder-

man was an infant, but directed such lease to be determinable on the lunatic's death before the expiration of the term, and without a covenant for quiet enjoyment.

THIS was a petition for a lease to be granted for 21 years at a rack-rent of a portion of the estate of this lunatic.

By the 11 Geo. 4, and 1 Wm. 4, c. 65, s. 23, it is enacted, that "where any person, being lunatic, is or shall be seised or possessed of any land, either for life or for some other estate, with power of granting leases and taking fines, reserving small rents on such leases, for one, two, or three lives in possession or reversion, or for some number of years determinable upon lives, or for any term of years absolutely, such power of leasing which is or shall be vested in such person, being lunatic and having a limited estate only, shall and may be executed by the committee of the estate of such person, under the direction and order of the Lord Chancellor, intrusted as aforesaid."

Jessel, in support, mentioned that the lessee was willing to take the lease without a covenant for quiet enjoyment.

The Lords Justices said, the order would not bind the remainder-man, who was an infant, if the lunatic should die before the expiration of the term, and directed the lease accordingly to be granted for the term determinable on the lunatic's death, and without a covenant for quiet enjoyment.

*In re Dyneley.* April 22, 1853.

LUNATIC.—LEASE OF PREMISES.—COSTS OF HEIR-AT-LAW AND NEXT OF KIN.

The heir-at-law of a lunatic appeared on a petition for the confirmation of the Master's report, approving of a lease for 21 years, of premises belonging to a lunatic, subject to be determinable on his prior decease: Held, on making an order, that he was not entitled to costs otherwise than as next of kin.

THIS was a petition for the confirmation of the Master's report, approving of a lease to be granted of certain premises belonging to this lunatic, for a term of 21 years, determinable on his decease.

J. Stuart in support.

T. C. Wright for the heir-at-law who was also one of the next of kin, applied for costs.

The Lords Justices said, he was entitled to appear as next of kin only and not as heir-at-law, and would therefore have his costs confined to the former character.

April 21, 22.—*In re German Mining Company—Cur. ad. vult.*

—22.—*In re Ferguson*—Order for allowance to lunatic's mother.

—23.—*Harrington v. Moffatt*—Appeal dismissed from the Master of the Rolls.

—23, 25.—*Boys v. Bradley*—*Cur. ad. vult.*

—26.—*Townsend v. White*—Arrangement come to.

## Master of the Rolls.

*Bouts v. Ellis.* April 23, 1853.

DONATIO MORTIS CAUSA. — DELIVERY OF CHEQUE FOR TESTATOR'S WIFE.

The testator, who had stated his intention to give his wife 1,000*l.*, exchanged cheques with his friend B. for that amount the day before his death, and B. paid in the testator's cheque, and received its amount the following day, and before his death. He subsequently handed the amount to the widow: Held, that there was a good donatio mortis causa, and that the amount of the cheque did not form part of the testator's estate after his death.

It appeared that the testator, Mr. Thomas Ellis, had intimated his desire to give his wife a sum of 1,000*l.*, and that on March 4, 1852, he accordingly gave his friend, Mr. Billiter, a cheque dated 5th March, for that amount, receiving his cheque in exchange, and Mr. Billiter paid the testator's cheque into his banker's, and it was paid before the testator's death on the 5th, and after the testator's death he paid over the 1,000*l.* to Mrs. Ellis. The executors now sought the direction of the Court, as to whether Mrs. Ellis or the residuary legatees were entitled to the sum in question.

W. W. Cooper for the executors; Lloyd and W. Hisslop Clarke for Mrs. Ellis; R. Pulmer and Ellis for the residuary legatees.

The Master of the Rolls said, the effect of the exchanged cheque was to show Mr. Billiter received the cheque on trust, and he had evidently supposed as trustee for Mrs. Ellis, and had accordingly paid it over to her. The amount must therefore be considered as a good donatio mortis causa, and not as forming part of his estate,—the costs would be costs in the cause.

April 20, 21.—*Preston v. Liverpool, Manchester, and Newcastle-on-Tyne Junction Railway Company*—Bill dismissed, without costs.

—21.—*Harden v. Mossy*—Injunction granted.

—21.—*Lovell v. Galloway*—Injunction granted to restrain action at law.

—22.—*Barrow v. Barrow*—Stand over.

—25.—*Ainslie v. Sims and another*—Demurrer to bill overruled.

—25.—*Corporation of Manchester v. Merritt*—Injunction granted.

—26.—*Attorney-General v. Chaplain of Exeter Hospital; Same v. Napier*—Part heard.

## Vice-Chancellor Kindersley.

*Fry v. Watson.* April 18, 1853.

MARRIAGE SETTLEMENT. — APPOINTMENT OF NEW TRUSTEE. — JOINT POWER. — CLAIM.—COSTS.

A claim was dismissed, with costs, on behalf

of the plaintiff, to carry into effect the trusts of a marriage settlement, which contained a power of appointing new trustees jointly with his wife, and also seeking the appointment of a new trustee upon the death of an old trustee, where the parties were separated and there was no probability of their concurring in the appointment of such trustee—it appearing that the plaintiff urged no sufficient reason against the appointment of one named by his wife, and the fund was held not liable to such costs.

Smythe appeared in support of this claim, which was filed to carry out the trusts of the marriage settlement of the plaintiff and his wife, and for the appointment of a new trustee thereof upon the death of one of the trustees. It appeared that, in consequence of his having separated from his wife, there was no probability of his concurring in the appointment under a joint power contained in the settlement of the trustee who had been nominated by Mrs. Fry.

W. Hislop Clarke for Mrs. Fry, contra.

The Vice-Chancellor said, the plaintiff had disappointed of the trustee named by his wife without urging any sufficient reason against his appointment, and the claim must be dismissed, with costs to be paid by the plaintiff, and not out of the fund.

April 21.—*Attenborough v. Edwards*—Injunction granted.

—22.—*In re London Conveyance Company*—Petition dismissed to wind up company.

—25, 26.—*Trevilian v. Mayor, &c., of Exeter*—Receiver continued, and order for payment of balances among mortgagees *pari passu*.

#### Vice-Chancellor Stuart.

*Hale v. Brailsford*. April 26, 1853.

LUNATIC NOT SO FOUND BY INQUISITION.—PETITION FOR APPROPRIATION OF DIVIDENDS TO MAINTENANCE.—JURISDICTION.

Held, that a petition on behalf of a lunatic not so found by inquisition for the appropriation of the dividends of stock carried over to his credit for his maintenance at a private lunatic asylum, must be presented in lunacy and not in Chancery.

THIS was a petition on behalf of a lunatic not so found by inquisition, for the appropriation of the dividends of certain stock which had been carried over to his credit, for his benefit in payment of the costs of his maintenance at a private lunatic asylum.

Nalder in support said, the Lords Justices had intimated, the petition might be presented in Chancery, citing *Davies v. Davies*, 2 De G. M'N. & G. 51.

The Vice-Chancellor said, the guardianship of the property of the lunatic belonged to the

Crown, and the proper jurisdiction was in lunacy, and the petition was therefore dismissed.

April 20.—*Smith v. Blackman*—Part heard.

—21.—*Webster v. Webster*—Struck out on non-appearance of counsel.

—21.—*Rees v. Rees*—The like.

—21.—*Gawthorn v. Goodall*—The like.

—21.—*Gibbs v. Comeley*—The like.

—21.—*Thompson v. Portbury Pier Company*—The like.

—21.—*Cable v. Cooper*—The like.

—22.—*Lyne v. Calvert*—Judgment on exceptions to Master's report and on further directions.

—23, 25.—*Inge v. Birmingham, Wolverhampton and Stour Valley Railway Company*—Decree for plaintiff.

#### Vice-Chancellor Wood.

*Official Manager of the Grand Trunk or Stafford and Peterborough Railway Company v. Brodie*. April 21, 22, 1853.

COSTS OF DEFENDANT ON DISMISSAL OF BILL.—RIGHT TO SET-OFF DEBT DUE TO COMPANY.—ASSIGNMENT.

A writ had been issued for the costs of the defendant, the secretary of a company, in a suit brought by the official manager upon its being wound up, and which had been dismissed with costs. It appeared by the defendant's answer, he admitted a certain sum to be due to the company, but he had assigned the amount of costs to his solicitors. The Court refused to set aside such writ on the ground of the defendant's having been outlawed after such assignment, and held that the plaintiff could not claim to set-off such costs against the sum due to the company.

THIS was a motion to quash a writ which had been issued to enforce the payment of the costs of this suit which had been instituted against the directors and Mr. Harman, the Secretary of this company, but which had been dismissed with costs.

Daniel and Little for the plaintiff, in support, on the ground that the secretary had been outlawed by a creditor, and sought a stay of the proceedings until he had paid over the amount admitted in his answer to be due from him to the company.

J. Baily, Hetherington, and Willcock, contra, on the ground his solicitors had taken an assignment of such costs before his outlawry.

The Vice-Chancellor said, the plaintiff could not claim to have the costs set-off against the money due to the company, and refused the motion accordingly.

*Sidebottom v. Watson*. April 26, 1853.

LEGACY OF MONEY DUE ON MORTGAGE.—PAYMENT BEFORE DECEASE OF TESTATOR.—ADEMPTION.

*A testator devised a sum of 500*l.*, owing to him on mortgage of a public-house at S., and the interest due thereon at his decease. The mortgage was paid off after the date of the will and before the testator's decease: Held, on special case, that the legacy was adeemed.*

Prendergast appeared for the plaintiff in this special case as to the construction of the will of a testator who gave to a party therein named a sum of 500*l.* owing to him on mortgage of a public-house at Shaw, and the interest due thereon at his decease. It appeared the testator had received the debt after the date of his will and before his death.

J. H. Palmer, for the legatee, urged the legacy was not adeemed, as it amounted to a gift of the money.

The Vice-Chancellor said, the description was inherent to the legacy, and that it was therefore adeemed upon its having ceased to exist before the decease of the testator.

April 20.—*Law v. London Indisputable Life Policy Company*—Exception to interrogatory allowed.

— 21.—*Baron du Perat v. Levanier*—Stand over.

— 22.—*Midland Railway Company v. Brown*—*Cur. ad. vult.*

— 23.—*In re Langham's Trust*—Bond of Canal Navigation Company held within Mortmain Act.

— 25.—*Shearman v. M'Gregor*—Injunction granted.

### Court of Queen's Bench.

*Drakeford v. Waller.* April 22, 1853.

COUNTY COURT APPEAL.—ACTION AGAINST LANDLORD FOR GOODS DISTRAINED.—CONCURRENCE OF PLAINTIFF.

*The plaintiff, who considered herself the wife of a man afterwards convicted of bigamy, had concurred in the delivery to his landlord under a distress for rent, of certain goods, which belonged to her two former husbands, but to whom she had not administered: Held, reversing the decision of the Cheshire County Court Judge with costs, that the plaintiff was not entitled to recover against the defendant as she had no property in the goods against the defendant.*

Welsby appeared in support of this appeal from the decision of the Judge of the Cheshire County Court, giving judgment for the plaintiff with 12*l.* 12*s.* damages in this plaint, which was brought against the defendant to recover for the proceeds of certain goods alleged to have been illegally seized and sold as a distress for rent in March, 1852. It appeared that the plaintiff was married to a man, who was since discovered to have another wife living and had been convicted for bigamy, and that while she

lived with him she possessed the furniture in question which had belonged to her two former husbands, but that she had never taken out administration to their estates. The plaintiff had interfered actively in delivering up the goods.

Miller, S. L., for the respondent.

The Court said, the plaintiff had no property in the goods as against the defendant, who was not a wrong doer so far as she was concerned, having seized with her express concurrence, and the appeal must be allowed, with costs.

*Morewood v. Pollock.* April 22, 1853.

CONVEYANCE OF GOODS BY SHIP.—LOSS BY FIRE ON BOARD LIGHTER.—LIABILITY OF DEFENDANT.

*Goods were delivered to the defendant to be conveyed by his ship, from M. to L., and they were put on board a lighter not belonging to him, for conveyance to his ship, and they were there destroyed by fire: Held, that he was not protected under 26 Geo. 3, c. 86, s. 2, and was liable for such loss.*

It appeared that certain cotton goods had been delivered to the defendant, to be conveyed by his ship *Barbara*, from Mobile to Liverpool, having been put on board a lighter not belonging to him. This action was brought upon their being damaged by fire before they reached the ship, to which the defendant pleaded he was relieved, under the 26 Geo. 3, c. 86, s. 2, which enacts, that "no owner or owners of any ship or vessel shall be subject or liable to answer for or make good, to any one or more person or persons, any loss or damage which may happen to any goods or merchandise whatsoever, which" "shall be shipped, taken in, or put on board any such ship or vessel, by reason or means of any fire happening to or on board the said ship or vessel."

W. L. Jones appeared in support of a demurrer to this plea; *Bramwell*, contra.

The Court said, it could not be said the goods when on board the lighter, which did not belong to the defendant, were shipped on board his ship, so as to be within the Act, and the plaintiff was therefore entitled to judgment.

*Jeffreys v. Higgins.* April 22, 1853.

MUNICIPAL CORPORATIONS' ACT.—PENALTY ON ALDERMAN ON ELECTION OF COUNCILLOR, &c.

*Held, that the penalty attaching to an alderman under the 5 & 6 Wm. 4, c. 76, s. 48, does not attach for non-compliance with certain directions as to the mode of conducting elections of councillors, &c., but only for refusing to conduct or to declare the election, and a demurrer to the declaration in an action to recover the penalty was accordingly allowed.*

THIS was a demurrer to the declaration in this action, which was brought against an alderman of the borough of Bradford to recover

a penalty of 100*l.* under the 5 & 6 Wm. 4, c. 76, s. 48, which enacts, that "if any mayor, alderman, or assessor of any borough who shall be in office at the time herein appointed," "for any election of councillors, assessors, or auditors which he is required to conduct or declare, shall neglect or refuse" "to conduct or declare such election as aforesaid, every such mayor, alderman, and assessor shall for every such offence forfeit and pay the sum of 100*l.*," "and the said penalties hereby in such case imposed shall be recovered, with full costs of suit, by any person who will sue for the same within three calendar months after the commission of such offence, by action of debt or on the case in any of her Majesty's Superior Courts of Record."

It appeared that the penalty was contended to attach for non-compliance with certain directions as to the mode of conducting such election.

*Macnamara* in support; *Worlledge*, contra, was not called on.

The Court said, the penalty only attached where an alderman wholly refused to conduct or declare the election, and that he was only liable to be indicted for the misdemeanour if he disobeyed the directions of the Act, and the judgment must be for the defendant.

*Regina v. Great Western Railway Company.*  
April 23, 1853.

MANDAMUS ON COMPANY TO COMPLETE BRANCH RAILWAY. — EXPIRATION OF COMPULSORY POWERS.

Held, that it was insufficient to return to a mandamus on a railway company to complete a branch line, that the compulsory powers under their Act to take the land required had expired, as they would be bound to complete if the land could be obtained by agreement with the owners. A demurrer to such return was accordingly allowed, and a peremptory mandamus awarded.

THIS was a demurrer to the return to this mandamus on the defendants, to complete the Bradford branch line of their railway, and which set out that their compulsory powers of taking land had expired.

*Crowder* and *Prideaux* in support, on the ground that the defendants might acquire the necessary land of the owners by agreement.

*Butt*, contra.

The Court said, as the defendants would be bound to complete the line if the land could be obtained by agreement, the demurrer must be allowed, and a peremptory mandamus was therefore awarded.

*Berkeley v. Elderkin.* April 26, 1853.

ACTION ON JUDGMENT IN COUNTY COURT. — DEMURRER.

Held, allowing a demurrer to the declaration, that an action could be brought on a judgment for debt and costs obtained in a

County Court under the 9 & 10 Vict. c. 95, but that the plaintiff was restricted to his remedies under that Act.

THIS was a demurrer to the declaration in this action on a judgment recovered in the Northamptonshire County Court for 49*l.* odd, debt, and 9*l.* costs.

*Field*, in support, referred to the 9 & 10 Vict. c. 95, ss. 94, 98, 100.

*Milward*, contra.

The Court said, that on looking at the County Court Act, it appeared clear the legislature intended the remedies on judgments in County Courts to be confined to those specially mentioned in the Act. The 100th section was conclusive, which provided that the County Court Judge might alter or vary his order, and therefore they were not final, and no action would lie thereon. The demurrer must be allowed.

April 20.—*Andrews v. Chapman*—Rule refused to set aside verdict for defendant, and for new trial.

—20.—*Fisher v. Bridges*—Rule nisi for judgment for plaintiff non obstante verdicto.

—21.—*Manley v. Boycot*—Cur. ad. vult.

—22.—*Stevenson v. Thomas*—Cur. ad. vult.

—23.—*Regina v. Temple*—Cur. ad. vult.

—25.—*Holmes v. Blagg and others*—Rule refused to set aside verdict for plaintiff.

—25.—*Regina v. Dugdale*—Rule nisi to set aside order for discharge out of custody.

—25.—*In re Philip Vaughan*—Rule nisi to strike attorney off the Roll on the application of the Incorporated Law Society.

—25.—*Regina (ex parte Plaskett) v. Judge of the Lincolnshire County Court*—Rule nisi for mandamus on defendant to hear attorney in insolvency case.

—25.—*Dancey v. Richardson*—Cur. ad. vult.

### Queen's Bench Practice Court.

(Coram Mr. Justice Coleridge.)

*Regina v. Mayor, &c., of Southwold.* April 22, 1853.

MUNICIPAL CORPORATIONS' ACT.—MANDAMUS FOR ELECTION OF AUDITORS AND ASSESSORS.

On motions for mandamus for the election of auditors and assessors under the 5 & 6 Wm. 4, c. 76, s. 38, one writ was held sufficient.

THIS was a motion for a mandamus on the defendants to elect auditors. It appeared that no election had taken place on 1st March, as directed by the 5 & 6 Wm. 4, c. 76, s. 38, in consequence of no burgess attending to vote in pursuance to the notice. A similar application was also made for the election of assessors.

*Palmer*, in support, asked whether it would be necessary to have two writs.

The Court said, that the two might be included in the one writ.

April 23.—*Esparte Legg*—Rule discharged for habeas corpus.

### Court of Common Pleas.

In re Witte. April 20, 1853.

HABEAS CORPUS TO BRING UP CHILD IN CUSTODY OF MOTHER.—VIOLATION OF AGREEMENT AS TO CUSTODY.

*Rule absolute in the first instance for habeas corpus, to bring up the body of the applicant's child of the age of seven years, who was in the custody of his mother by agreement, under an order in the Ecclesiastical Court, up to April 1st last, and who had been brought to this country, although it was thereby agreed he should not go out of Germany.*

THIS was a motion for a writ of habeas corpus on Mrs. Witte, the applicant's wife, and her father, to bring up the body of the applicant's son, aged seven years, who had been placed in her custody by agreement, under an order in the Ecclesiastical Court, upon their separation, up to April 1st last. It was arranged by the agreement that the son was to be sent to school in Germany, and was not to go out of that country, but Mrs. Witte had recently left Hamburgh, where she was living, and had brought him to England.

*Willes* in support, cited *Esparte M'Clellan*, 1 Dowl. P. C. 81.

The Court made the rule absolute in the first instance.

April 23.—*Hanbury v. Carter*—Rule nisi to set aside demurrer, and for leave to sign judgment for want of replication, or to amend plea.

— 25.—*Perry v. Monmouthshire Railway and Canal Company*—Cur. ad. vult.

— 25.—*Parker v. Farebrother and others*—Rule nisi to reduce damages.

— 25.—*Moffatt v. Dixon*—Judgment herein.

— 26.—*General Steam Navigation Company v. Morrison*—On demurrer to declaration, judgment for defendant.

### Court of Exchequer.

*Thorn v. Bigland*. April 18, 1853.

ACTION OF DECEIT.—“FALSELY AND FRAUDULENTLY” MISREPRESENTING CONTRACT BY BROKER.—AMENDMENT.—NEGLIGENCE.

In an action of deceit against a broker for “falsely and fraudulently” misrepresenting a contract for the purchase by the plaintiff of oil, it appeared by the bought note the contract was subject to the vessel by which the oil was to be brought containing more than 850 gallons, and she proved to contain less than that quantity. The plaintiff was therefore forced to purchase oil at an advanced price. On the trial, it was admitted there was no ground for im-

puting any false or fraudulent misrepresentation to the plaintiff, and the presiding Judge refused to amend the declaration by substituting “negligently” for such words, and directed a nonsuit. A rule to set aside such nonsuit and enter the verdict for the plaintiff was refused.

THIS was a motion to set aside a nonsuit and to enter the verdict for the plaintiff in this action, which was brought to recover compensation for loss sustained by the plaintiff, a soap manufacturer for falsely and fraudulently misrepresenting the terms of a contract entered into by the defendant, who is a broker, on his behalf for the purchase of 25 tons of oil at 30s. per ton to arrive by a vessel named the Simla. It appeared upon the bought note being handed to the plaintiff, that the contract was subject to the condition that the cargo in the Simla exceeded 850 tons, and that upon the quantity being less than such amount the plaintiff had to purchase oil elsewhere at an advanced price. On the trial, at the last Liverpool Assizes, *Martin, B.*, who presided, refused to amend the declaration by substituting the word “negligently” for “falsely and fraudulently,” upon its appearing there was no ground for imputing such false or fraudulent misrepresentation to the defendant, and the plaintiff was accordingly nonsuited, subject to this motion.

*Hugh Hill* in support, on the ground an action of deceit would lie, although there was an entire absence of fraud.

The Court said, that although it was settled a plaintiff could recover in an action of deceit, after striking out the words in question, yet in the present case they constituted the very essence of the cause of action. It was admitted there was no ground for imputing any improper conduct to the defendant, and there was no fraudulent conduct on his part, or any misrepresentation which had the character of fraud in it. The question was, whether the omission to furnish the plaintiff with the full particulars of the contract exceeded mere negligence, and amounted to fraud to support the present action. As, however, the representation was not false, but true, as far as it went, and in the absence of fraud a mere inaccuracy of description, the rule must be refused.

April 20.—*Morrison v. General Steam Navigation Company*—Rule nisi for new trial.

— 21.—*Gast v. Hart*—Motion for rule for new trial withdrawn.

— 22.—*Lawes v. Batchelor*—Cur. ad. vult.

— 23.—*In re Thomas Caxra Caulker*—Rule for habeas corpus discharged.

— 23.—*Renaude v. Teakle*—Rule absolute for new trial on the ground of misdirection and of verdict being against evidence.

— 25.—*Prætorius v. Sykes*—Rule nisi to modify Master's order as to security for costs, or for reversal of the same.

— 20, 26.—*Glen v. Lewis*—Rule nisi to enter verdict for defendant: cur. ad. vult.



## Court of Exchequer Chamber.

*Regina v. Millard and another.* April 23, 1853.

## MALICIOUS TRESPASSES' ACT.—INFORMATION ON OATH.—PERJURY.

Held, confirming a conviction for perjury in respect of evidence taken before a magistrate on an information under the 7 & 8 Geo. 4, c. 30, that such information need not be on oath.

This was an indictment for perjury committed in respect of certain evidence taken before a magistrate on an information under the Malicious Trespasses' Act (7 & 8 Geo. 4, c. 30). On the trial before *Wightman, J.*, at the last Pembroke Assizes, it appeared that the information was not on oath.

*Terry*, in support of an appeal from the conviction, contended the magistrate had no jurisdiction, as the information should have been on oath.

The Court, after referring to ss. 24 and 30, said, the information need not even be made in writing, but a verbal statement was sufficient, and confirmed the conviction accordingly.

April 16.—*Rivington v. Cannan*—*Venire de novo*.

— 21.—*Great Western Railway Company v. Regiam*—Stand over.

— 21.—*Smith v. Cannon*—Stand over.

— 21.—*Waddington v. Castelli*—Stand over.

— 23.—*Regina v. Mankleton*—Conviction affirmed.

— 23.—*Regina v. Reed*—*Cur. ad. vult.*

## ANALYTICAL DIGEST OF CASES,

## REPORTED IN ALL THE COURTS.

## RIGHTS OF ACTION.

[Concluded from p. 508.]

## MASTER AND SERVANT.

*Contract of service by infant*.—A contract by an infant, binding him to serve for a certain time for wages, but enabling the master to stop the work whenever he chooses, and to retain the wages during stoppage, is wholly void, as not being beneficial to the infant.

And, where a servant had been convicted (under Stat. 4 Geo. 4, c. 34, s. 3), of absenting himself from service under such contract, this Court quashed the conviction. *Regina v. Lord*, 12 Q. B. 857.

## MERGER.

*Bond or covenant given to secure simple contract debt*.—A bond or covenant given to secure an existing debt, irrespectively of the intention of the parties, operates in law as a merger of the remedy on the simple contract. *Price v. Moulton*, 10 C. B. 561.

## MORTGAGE.

*Value of estate reduced by interest of mortgage, the interest not being secured by the deed*.—*A.*, possessed of a freehold estate of the yearly value of 5*l.*, mortgaged it for 100*l.*: the deed was declared to be a security for the principal sum only; and the power of sale was for payment of that sum only, at a day long past: but it was found as a fact that interest had been regularly paid upon the 100*l.* at five per cent.: Held, that *A.* had not an interest in land "to the value of 40*s.* by the year at the least above all charges," within the 8 Hen. 6, c. 7, and therefore was not entitled to be registered for the county. *Lee v. Hutchinson*, 8 C. B. 16.

## NEGLIGENCE.

1. *What question for jury*.—In an action for

damages occasioned by the defendant's negligence, a material question is, whether or not the plaintiff might have escaped the damage by ordinary care on his own part. But the defendant is not excused merely because the plaintiff knew that some danger existed through the defendant's neglect, and voluntarily incurred such danger. The amount of danger, and the circumstance which led the plaintiff to incur it, are for the consideration of the jury. *Clayards v. Dethick*, 12 Q. B. 439.

2. *Plaintiff disentitled to recover*.—Where Commissioners of Sewers had made a dangerous trench in the only outlet from a mews, putting up no fence, and leaving only a narrow passage on which they heaped rubbish; and a cabman, in the exercise of his calling, attempted to lead his horse out over the rubbish, and the horse fell and was killed, for which loss he brought an action: Held, that the plaintiff was not disentitled to recover because he had at some hazard, created by the defendants, brought his horse out of the stable: and that the case was properly left to the jury on the question whether or not the plaintiff had persisted, contrary to express warning at the time (as to which there was contradictory evidence), in running upon a great and obvious danger. *Clayards v. Dethick*, 12 Q. B. 439.

3. *Plaintiff's want of care conducing to the injury*.—One who sustains an injury from a collision with a carriage or a vessel, cannot maintain an action against the owners of such carriage or vessel, if negligence either on his own part, or on the part of those having the guidance of the carriage or vessel in which he is a passenger, conducing to the accident, and such injury might have been avoided by the exercise of reasonable care on his part or their part. *Thorogood v. Bryan*, 8 C. B. 116; *Cattlin v. Hills*, ib. 123.

Case cited in the judgment: *Bridge v. Grand Junction Railway Company*, 3 M. & W. 244.

4. *Liability of master for injury done to one servant by the negligence of another.*—A master is not responsible to his servant for injury occasioned by the negligence of a fellow-servant in the course of their common employment, provided the latter be a person of competent care and skill.

Therefore, where a servant of a railway company, in discharge of his duty as such, was proceeding in a train under the guidance of others of their servants, through whose negligence a collision took place, and he was killed:—*Held*, that his representative could not maintain an action against the company under the 9 & 10 Vict. c. 93; and that it made no difference in this respect whether the accident was occasioned by the negligence of the servants guiding the train in which the deceased was, or of those guiding the other train, or of both. *Hutchinson v. York, Newcastle, and Berwick Railway Company*, 5 Exch. R. 343.

Case cited in the judgment: *Priestley v. Fowler*, 3 M. & W. 1.

5. *Extent of parties' responsibility.*—*Quere*, per Pollock, C.B., when a person guilty of negligence is responsible for all possible consequences of it, although they could not have been reasonably foreseen or expected. *Greenland v. Chaplin*, 8 Exch. R. 243.

#### PRINCIPAL AND AGENT.

1. *Liability of principal for money paid by brokers in consequence of principal's default.*—If a party authorises a broker to buy shares for him in a particular market, where the usage is that when a purchaser does not pay for his shares within a given time, the vendor, giving the purchaser notice, may re-sell, and charge him with the difference; and the broker, acting under the authority, buys at such market in his own name; such broker, if compelled to pay a difference on the shares through neglect of his principal to supply funds, may sue the principal for money paid to his use.

And it is not necessary, in such action, to shew that the principal knew of the custom. *Pollock v. Stables*, 12 Q. B. 765.

Cases cited in the judgment: *Bayliffe v. Butterworth*, 1 Exch. R. 425; *Smith v. Tatham*, 10 A. & E. 27.

2. *Contract.—Liability as principal.*—Assumpsit on a contract alleged to have been made by defendant to charter a ship to plaintiff. Plea, Non-assumpsit. Proof, that defendant made a memorandum of charterparty in B's name, and purporting to be signed by defendant as agent for B: that defendant had no authority to contract for B, and knew that he had none; and that B. refused to adopt the contract.

*Held*, that defendant was not liable as principal, in an action on the contract itself: and a nonsuit was entered. *Jenkins v. Hutchinson*, 13 Q. B. 744.

Cases cited in the judgment: *Polhill v. Walter*,

3 B. & Ad. 114; *Wilson v. Barthrop*, 2 M. & W. 863.

3. *Payment to clerk; when a valid discharge.*—Goods were left by the plaintiff in the warehouse of E. & Co., at Huddersfield, for sale. The defendant, who resided in London, purchased a parcel of the goods, and remitted the price to the plaintiff. The defendants, having afterwards purchased some more of the goods, received a letter from T., the clerk of E. & Co., inclosing an invoice, and purporting to be written by E. & Co., by the procurement of the plaintiff, stating that they were authorised by the plaintiff to receive payment for him, and requesting the defendant to remit the money to them. The defendant accordingly remitted the amount by cheque, inclosed in a letter addressed to E. & Co., and which was delivered at their counting-house; but T. intercepted the letter, and appropriated the money to his own use. T. had authority from the plaintiff to receive money paid over the counter for goods sold in the warehouse, but in no other way:—*Held*, that the receipt by T. was no payment to the plaintiff. *Kaye v. Brett*, 5 Exch. R. 269.

#### REPAIRS.

*Agreement.—Condition precedent.—Divisibility of condition.*—Plaintiff and defendants agreed, the plaintiff to let, and defendants to take, a messuage, barn, stable, and outbuildings; and defendants agreed to keep in repair the said messuage, buildings, and premises, the same being first put into repair by the plaintiff. In an act of assumpsit for non-repair (declaration alleging that, although plaintiff before the breach of promise, put the said messuage, buildings, and premises into repair, yet defendant did not keep the same in repair; to which defendants pleaded that plaintiff did not first put the said messuage, buildings, and premises, into repair; and issue was taken thereon), it was proved, and found in terms by the jury, that the plaintiff had not put the whole premises into repair, but part only; and that defendants had not kept that part in repair; and the jury gave damages for the part: *Held*,

1. That the repair by plaintiff was a condition precedent to the obligation on the defendants to keep in repair.

2. That, on this contract, the condition precedent could not be divided, and that plaintiff could not recover for non-repair of any part of the premises without having first repaired the whole.

*Quere*, whether such a condition precedent might not be divided, if it related to subject matters clearly distinct in their nature; as if the contract in question had related to two dwelling-houses entirely separate from each other. *Neale v. Ratcliff*, 15 Q. B. 916.

#### TRADE, RESTRAINT OF.

A butcher, on assigning for the residue of a term, certain premises upon which he had carried on his business, together with the fixtures and the goodwill of the trade, covenanted with the purchaser, that he would not

at any time thereafter, either by himself, or as agent or journeyman for another, set up, exercise, or carry on, or be employed in, the trade or business of a butcher, within five miles from the premises thereby assigned.

*Held*, not an unreasonable restraint, either in respect of time or in respect of distance; and that the covenant did not cease to be a binding covenant on the expiration of the term, or on the covenantee's ceasing, by himself or his assigns, to carry on the business assigned. *Eles v. Crofts*, 10 C. B. 241.

Cases cited in the judgment: *Hitchcock v. Coker*, 6 Ad. & E. 458; 1 N. & P. 796; *Mallan v. May*, 11 M. & W. 633; *Rennie v. Irvine*, 7 M. & G. 969; 8 Scott, N. R., 674; *Pemberton v. Vaughan*, 10 Q. B. 87; *Hastings v. Whitley*, 2 Exch. R. 611; *Atkyns v. Kinmer*, 19 Law Journ., Exch. 138.

#### TRESPASS.

*For irregularity of process out of County Court entered in another jurisdiction.—Arrest of persons obstructing execution.*—Where a warrant issues upon a judgment of a County Court against a party resident within another jurisdiction, and is sealed by the clerk of the Court there, under the 104th sect. of the 9 & 10 Vict. c. 95, the high bailiff of the Court out of which the warrant originally issued, is not responsible for any irregularities in its execution by the under-bailiff of the foreign jurisdiction, even though his own under-bailiff assists therein.

Under a warrant so issued by one Court, and sealed by the clerk of another Court, the officers broke and entered the premises of a third person, under a mistaken impression that a party against whom a warrant was directed, was there; and, upon the owner of the premises resisting their entry, the bailiffs, under colour of the 114th sect. of the Statute, took him into custody, and carried him before a magistrate:—

*Held*, that the high-bailiff of the Court from which the warrant was re-issued, was liable with the under-bailiffs for the breaking and entering, which was an act done by the latter under the supposed authority of the writ; but not for the assault, which was committed in the assertion of a power given by the Statute to the individual officer obstructed. *Smith v. Pritchard*, 8 C. B. 565.

#### USURY.

*Document not within 2 & 3 Vict. c. 37, loan protected by.*—The defendant lent T. 500*l.*, and received from him a document whereby he promised to pay the defendant or his order, on demand, 500*l.*, with 7*l.* per cent. interest, and also to give the defendant a life policy, and the lease of a house. The lease and policy were deposited within a few days, and some weeks afterwards T. executed an assignment of the lease to the defendant, as a security for repayment of the 500*l.*, and interest at 5*l.* per cent. T. subsequently made several payments of interest at 7*l.* per cent.:—*Held*, that the above document was not within the protection of the

3 & 4 Will. 4, c. 98, s. 7; for it was not a promissory note, inasmuch as it contained a promise to pay money, and also to do another act; that the loan was not protected by the 2 & 3 Vict. c. 37, because it was accompanied by a real security; and that, the assignment being part of the same transaction, the whole was usurious and void under the 13 Anne, Stat. 2, c. 16, and the assignees of T., who had become bankrupt, were entitled to recover both the lease and policy. *Quere*, whether, if the document had been a promissory note, the loan would have been protected by the 3 & 4 Will. 4, c. 98, s. 7, it being further secured by an interest in land.

*Follett v. Moore*, 4 Exch. R. 410.

Case cited in the judgment: *Martin v. Chantry*, 2 Str. 1271.

#### WARRANTY.

*Not to be extended by implication.*—Upon a contract for the sale of goods, with a particular express warranty, the Court will not extend such warranty by implication.

The declaration stated a bargain for the sale by the defendants to the plaintiff of a certain cargo, to wit, the cargo of Indian corn then shipped at Orfano, on board the Ottoman, at a certain price, including freight and insurance to Cork, Liverpool, or London, and that it was agreed that the quality of the said Indian corn was equal to the average of the shipments of that article in the season of 1847, and that the said Indian corn had been shipped in good and merchantable condition; and alleged for breach, that the corn was not, at the time of shipment, or at any other time, in good and merchantable condition, or in a fit and proper condition for the performance of the voyage from Orfano to Cork, &c.

The Judge left it to the jury to say whether the corn was, at the time of shipment, in a good and merchantable condition for a foreign voyage:—*Held*, a misdirection; inasmuch as it was extending by implication the express warranty contained in the contract. *Dickson v. Zizania*, 10 C. B. 602.

#### WASTE.

*Action against executors of a rector.—Alteration of buildings.*—The executors of a rector are not liable to an action on the case in the nature of waste, for pulling down a building on the rectory, and substituting another in a different part, unless the value of the estate be thereby impaired, the burthens upon it increased, or the evidence of title impaired. Nor, therefore, if the rector suffers a farm building adjoining the rectory house to go to decay, and in the meantime erects a better building for the same purpose, a mile from the house, but in a situation more convenient for the farming business, as carried on, at, and from the time of the substitution. Although no faculty or licence be obtained for the alteration. *Huntley v. Russell*, 13 Q. B. 572.

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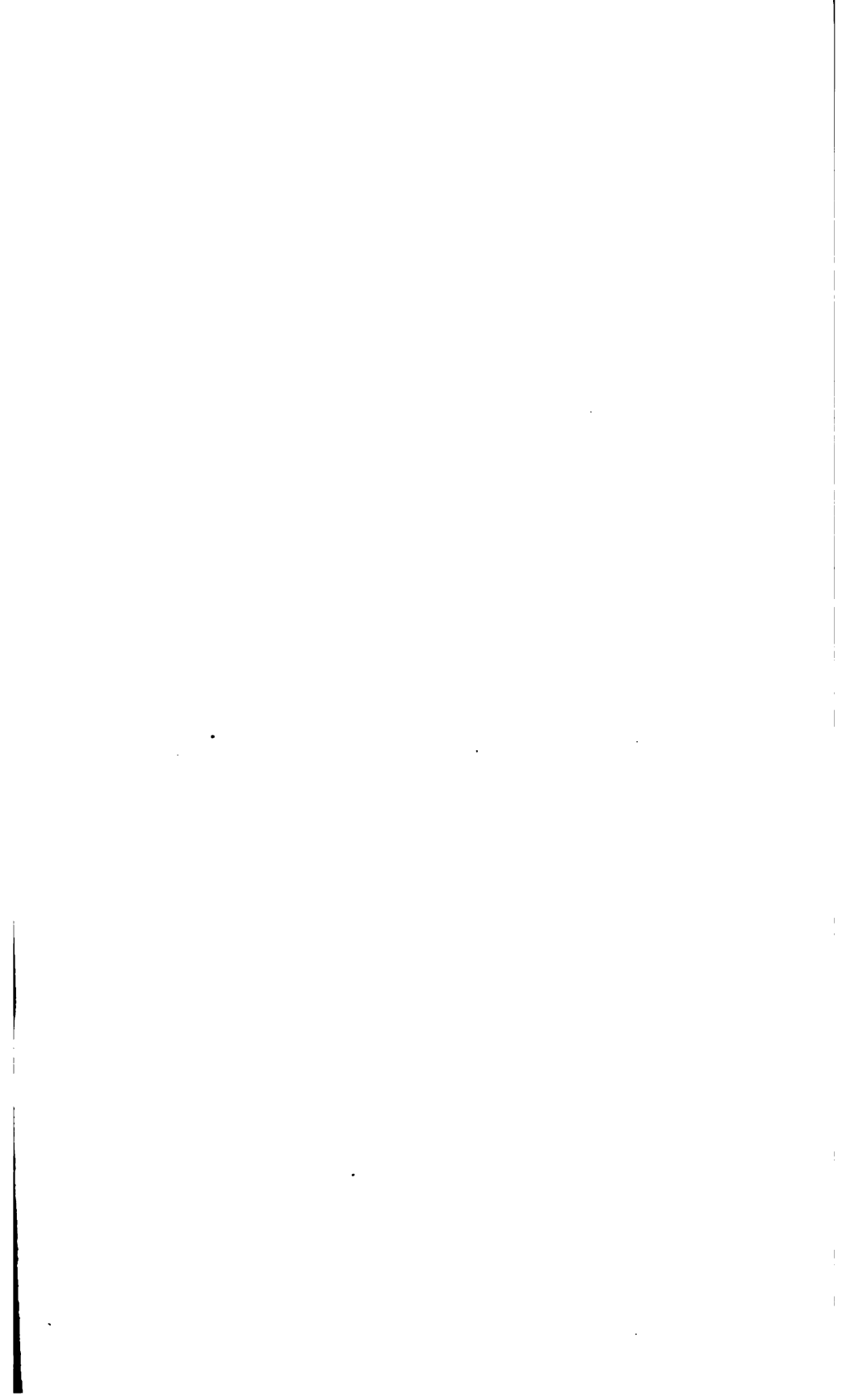
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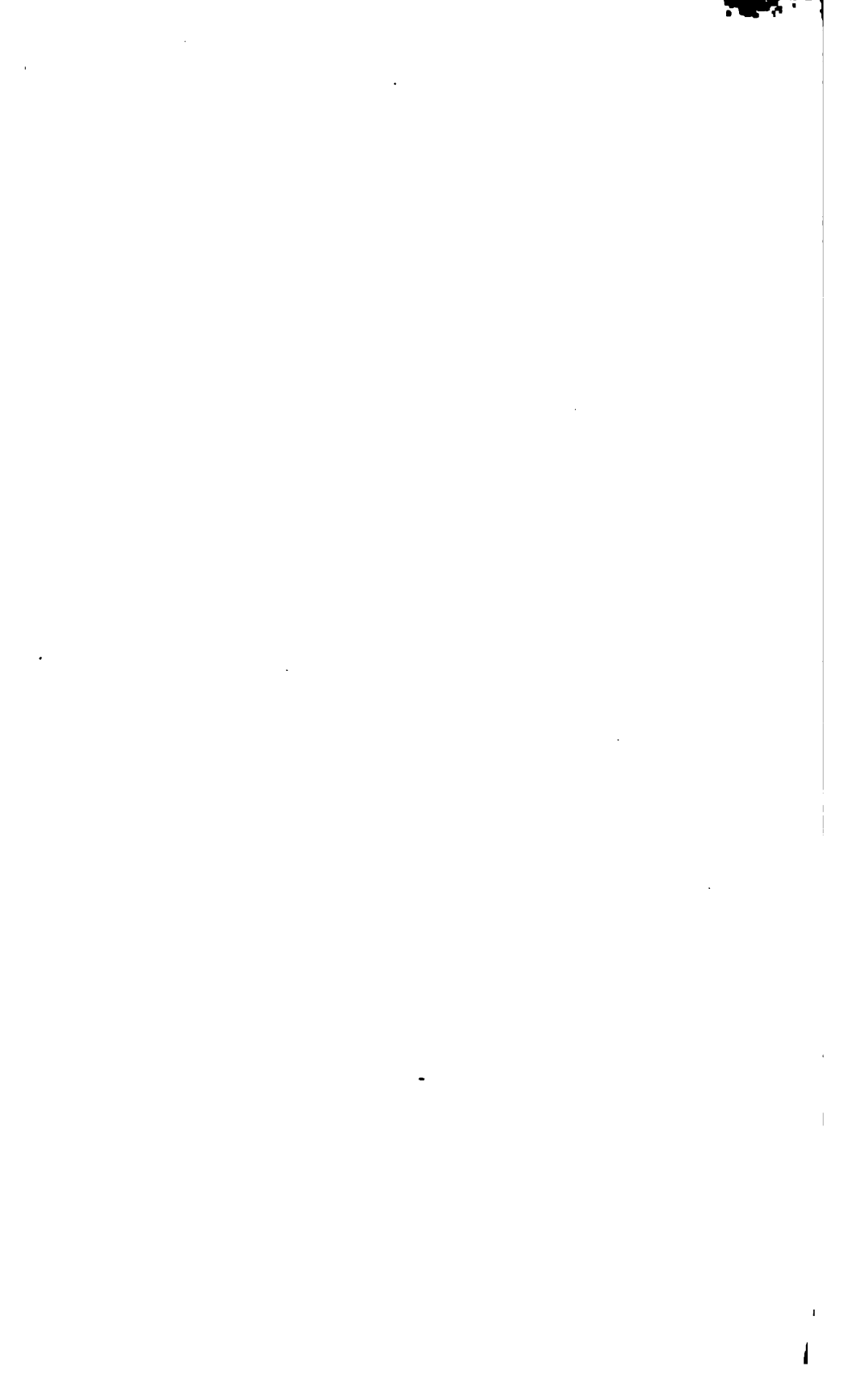
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